Version Date: 28 December 2020



**TERM SHEET FOR A PROJECT FINANCE TRANSACTION WHICH MAY BE USED WITH:**

**(A) INFRASTRUCTURE ASIA MANDATE LETTER; AND  
(B) INFRASTRUCTURE ASIA COMMON TERMS AGREEMENT**

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**TERM SHEET**

**[*Insert base currency and total amount of facilities*] FACILIT[Y/IES] FOR [*Insert name of project company*]**

|  |  |
| --- | --- |
|  |  |
| [Please note that the terms set out in this Term Sheet are indicative only and not legally binding and do not constitute an offer to arrange or finance the Facilit[y/ies]. The provision of the Facilit[y/ies] is subject to, amongst other things, due diligence, satisfaction of applicable "know your customer" checks, finalisation of the Financial Model, all internal approvals (including, but not limited to, credit committee approval)[, the terms and conditions of the Mandate Letter] and satisfactory documentation.] This Term Sheet does not purport to contain all of the terms of any proposed financing. | |
|  | |

[DATE]

[NAME OF MANDATED LEAD ARRANGERS]

1. PARTIES

|  |  |
| --- | --- |
| * 1. EQUITY PARTIES |  |
| * + 1. **Borrower**: | [*Insert name of project company*] (the "**Project Company**"). |
| * + 1. **Sponsors[[1]](#footnote-2)**: | [*List the sponsors of the Project*]. |
| * + 1. **[Shareholders:[[2]](#footnote-3)]** | [*List the shareholders of the* *Project Company*]. |
| * + 1. **[Shareholding Structure:]** | [*Insert the percentages of each Shareholder's/Sponsor's interest in the* *Project Company at Financial Close*]. |
|  |  |
| * 1. PROJECT COUNTERPARTIES[[3]](#footnote-4) |  |
| * + 1. **Construction Contractor:** | [*Insert*]. |
| * + 1. **O&M Contractor:** | [*Insert*]. |
| * + 1. **Supplier(s):** | [*Insert*]. |
| * + 1. **Offtaker(s):** | [*Insert*]. |
| * + 1. **[*Insert*]** | [*Insert*]. |
| * + 1. **Major Project Participants:[[4]](#footnote-5)** | 1. [[*The Construction Contractor*] (until the end of the [defects notification period][[5]](#footnote-6) under the Construction Contract);] 2. [*The O&M Contractor, when such arrangements are put in place*]; 3. [*The Supplier(s)*]; 4. [*The Offtaker(s)*]; 5. [*other counterparties to the key Project Documents, and guarantors to these parties (if any)*[[6]](#footnote-7)]; 6. [the Shareholders,] the Sponsors, the Project Company; and 7. any other party which the Intercreditor Agent and the Project Company agree should be a Major Project Participant.[[7]](#footnote-8) |
|  |  |
| * 1. FINANCE PARTIES |  |
| * + 1. **Mandated Lead Arranger[s]:** | [                ] [and [               ]]. |
| * + 1. **Lenders:** | As selected by the Mandated Lead Arranger[s] [in consultation with the Project Company]. |
| * + 1. **[Hedging Bank[s]:]** | [                ] [and [               ]]. |
| * + 1. **[Development Finance Institution[s]:]** | [                ]. |
| * + 1. **[Export Credit Agenc[y/ies]:]** | [                ]. |
| * + 1. **[Intercreditor Agent:][[8]](#footnote-9)** | [                ]. |
| * + 1. **[[ ] Facility Agent(s):][[9]](#footnote-10)** | [                ]. |
| * + 1. **[Offshore Security [Agent] / [Trustee]:][[10]](#footnote-11)** | [                ]. |
| * + 1. **[Onshore Security [Agent] / [Trustee]:][[11]](#footnote-12)** | [                ]. |
| * + 1. **[Offshore Account Bank:][[12]](#footnote-13)** | [                ]. |
| * + 1. **[Onshore Account Bank:]****[[13]](#footnote-14)** | [                ]. |
| * + 1. **[Issuing Bank:][[14]](#footnote-15)** | [                ]. |
| [**ROLE BANKS**]**[[15]](#footnote-16)** |  |
| * + 1. **[Documentation Bank:][[16]](#footnote-17)** | [                ]. |
| * + 1. **[Technical Bank:][[17]](#footnote-18)** | [                ]. |
| * + 1. **[Environmental Bank:][[18]](#footnote-19)** | [                ]. |
| * + 1. **[Insurance Bank:][[19]](#footnote-20)** | [                ]. |
| * + 1. **[Hedging Coordination Bank:][[20]](#footnote-21)** | [                ]. |
| * + 1. **[Modelling Bank:][[21]](#footnote-22)** | [                ]. |
| * 1. ADVISERS[[22]](#footnote-23) |  |
| * + 1. **Model Auditor:** | [                ]. |
| * + 1. **Technical Adviser:** | [                ]. |
| * + 1. **[Environmental and Social Adviser:]** | [                ]. |
| * + 1. **[Insurance Adviser:]** | [                ]. |
| * + 1. **Lenders' Legal Adviser(s):** | [                ]. |
| * + 1. **Project Company's Legal Adviser(s):** | [                ]. |
| * + 1. **[*Other* *Adviser(s)*:][[23]](#footnote-24)** | [                ]. |

1. BUDGETED PROJECT COST AND FINANCING PLAN

|  |  |
| --- | --- |
| * + 1. **Budgeted project cost:** | Total budgeted Project cost: [•].  Breakdown: See Schedule 2 (*Breakdown of Project Costs*). |
| * + 1. **Facilities[[24]](#footnote-25):** | * + - * 1. Term Loan A Facility.         2. [Working Capital Facility][[25]](#footnote-26).         3. [Standby Facility][[26]](#footnote-27).         4. [Equity Bridge Facility][[27]](#footnote-28).         5. [ECA Facility][[28]](#footnote-29).         6. [DFI Facility][[29]](#footnote-30).         7. [VAT/GST Facility][[30]](#footnote-31).         8. [*Other*][[31]](#footnote-32). |
| * + 1. **[Equity Contribution**[[32]](#footnote-33)**:** | * + - * 1. The [Sponsors/Shareholders] will subscribe for equity in the Project Company [and/or will make available to the Project Company subordinated loans] in an aggregate amount of [•] to fund Project Costs ("**Base Equity**").         2. [Revenues generated by the Project prior to the Project Completion Date will be deemed to be included as Base Equity and applied or to be applied towards funding Project costs.]         3. Base Equity will be contributed [in an amount equal to at least [•] prior to Financial Close ("**Upfront Equity**"), and thereafter] [*pro rata* with Utilisations under the Term Loan A Facility].         4. [The full amount of any remaining Base Equity commitment will be contributed by the [Sponsors/Shareholders] immediately following demand by the Intercreditor Agent following the occurrence of an Event of Default which is continuing.][[33]](#footnote-34)         5. [The Shareholders will subscribe for additional equity in the Project Company and/or will make available to the Project Company additional subordinated loans in an aggregate amount of [•] on a standby basis to fund Project Cost overruns ("**Standby Equity**").][[34]](#footnote-35)         6. [The obligations of the Shareholders to contribute Base Equity [and Standby Equity] will be supported by [on demand letters of credit in form and substance satisfactory to the Lenders from a bank or banks which have a long term credit rating of at least [•] from time to time] [and/or][a parent company guarantee in form and substance satisfactory to the Lenders [unless [any rating of *parent company*] falls below [•][[35]](#footnote-36) or equivalent]/[*other acceptable financial metrics*], in which case such obligations will be supported by a letter of credit [*as above*]]. Such [on demand letters of credit and/or parent company guarantee] (and the obligations thereunder) in respect of any Base Equity [and Standby Equity] shall be released on the Financial Completion Date.]] |
| * + 1. **[Sponsor Support/Undertakings:][[36]](#footnote-37)** | [                  ]. |
| * + 1. **Debt to Equity Ratio:[[37]](#footnote-38)** | [*This will be the required ratio of Debt (i.e. total principal amount of the senior debt) to Equity (i.e. fully paid up share capital + shareholder loans already made and committed[[38]](#footnote-39)).*] |
| * + 1. **Signing Date:** | The date on which the Finance Documents are executed. |
| * + 1. **Financial Close:** | The date of satisfaction or waiver of all initial conditions precedent to financial close as described in "Conditions Precedent" below. |
| * + 1. **Commercial Operation Date**[[39]](#footnote-40)**:** | * + - 1. [●]. |
| * + 1. **[Financial Completion Date**[[40]](#footnote-41)**:** | The first date on which the following completion requirements have been achieved to the satisfaction of the Lenders: [●].] |
| * + 1. **Project Completion Date:** | The first date on which the following completion requirements have been satisfied:   * + - * 1. the [*insert completion, reliability and performance tests*] have been satisfied in accordance with the Construction Contract [and the Offtake Contract[s]];         2. the relevant provisional/initial acceptance certificate has been issued;         3. the [*insert relevant project authority*] has confirmed acceptance of [ ] under [*insert relevant concession agreement*];         4. the [Plant and all associated infrastructure and utilities required for the Project] are completed to the satisfaction of the Technical Adviser, have been accepted by the Project Company and have been functioning in accordance with the design and operating specifications set out in the Construction Contract [and the Offtake Contract[s]];         5. [*insert any further technical or performance requirements of the Plant or associated or required infrastructure and utilities whether on or off the project site*];         6. the Commercial Operation Date has occurred;         7. the Supply Contract[s], the Offtake Contract[s], the O&M Contract, [and][*insert others that are relevant*] are unconditional and in full force and effect and the parties thereto are performing in accordance with their terms;         8. there are no pending or outstanding actions, claims, disputes or proceedings against the Project Company and all Project Costs which have become due and payable have been paid in full or adequate reserves have been made therefor;         9. any delay liquidated damages and/or performance liquidated damages payable under the Construction Contract [and the Offtake Contract[s]] have been paid in full;         10. the up-to-date Base Case and the operating budgets have been prepared by the Project Company and approved by the Intercreditor Agent in consultation with the Technical Adviser;         11. the most recently delivered Financial Report demonstrates that, on the most recent Calculation Date, (i) [the Projected DSCR is at least [ ]][[41]](#footnote-42), and (ii) [the LLCR is at least [ ]];         12. the Project is in compliance with all environmental laws and guidelines;         13. all authorisations/consents necessary to enable the Project Company to exercise its rights and to perform and comply with its obligations under the Project Documents have been issued on an unconditional basis (or, if issued subject to conditions, such conditions have been satisfied or waived) and remain in full force and effect;         14. the Debt Service Reserve Account is funded to the then required amount as described in "Debt Service Reserve Account" below[, either by deposit of cash or by Acceptable Credit Support[[42]](#footnote-43)];         15. the Maintenance Reserve Account is funded to the then required amount as described in "Maintenance Reserve Account" below[, either by deposit of cash or by Acceptable Credit Support];         16. all insurances required for the operating period have been effected and are in full force and effect, as certified by the Insurance Adviser;         17. no Default [or force majeure] is continuing;         18. [*insert any other conditions (e.g. E&S reports or updates) or performance, documentary (e.g. defects/performance warranties) or financial requirements*];         19. the Technical Adviser has delivered to the Intercreditor Agent a report confirming that the Project Company has satisfied each of the requirements in paragraphs [ ] and [ ] above; and         20. the Project Company has delivered to the Intercreditor Agent a notice, signed by a director, certifying that the requirements of paragraphs [ ] and [ ] above have been satisfied and the Intercreditor Agent has confirmed its acceptance of such notice. |
| * + 1. **Scheduled [Project Completion Date] / [Financial Completion Date]:** | [*•*] |
| * + 1. **Longstop Date:** | [*•*][[43]](#footnote-44) |
| * + 1. **[Equity True-Up:[[44]](#footnote-45)]** | * + - 1. [On the Financial Completion Date, if the funds available under [the Facilities]**[[45]](#footnote-46)** exceed the remaining unpaid Project Costs [as certified by the Technical Adviser], then the Project Company may apply such excess portion of the final utilisation to effect a partial repayment of the outstanding shareholder loans or to declare a special dividend or distribution, in each case, in the amount of such excess, provided that at the time of and immediately following the relevant utilisation and making of such repayment or declaration of such dividend or distribution:          1. the [Projected DSCR] for each Calculation Date occurring after such utilisation is projected to be not less than [•];          2. [the LLCR is not less than [•];]          3. the Debt to Equity Ratio is not greater than [•]; [and]          4. no Default is continuing [or would result from the making or declaration of such repayment, prepayment or dividend or distribution][; and          5. the Debt Service Reserve Account is funded to the then required amount as described in "Debt Service Reserve Account" below[, either by deposit of cash or by Acceptable Credit Support].   Any equity true-up provided for above is not subject to the satisfaction of the Distribution Tests.] |

1. FACILITIES
   1. TERM LOAN A FACILITY[[46]](#footnote-47)

|  |  |
| --- | --- |
| * + 1. **Facility:** | Term loan facility. |
| * + 1. **Amount:** | [*Insert currency and amount of term facility*]. |
| * + 1. **Margin:** | * + - * 1. At any time prior to the [Financial Completion Date] / Project Completion Date, [●]% per annum.         2. At any time on or after the [Financial Completion Date] / Project Completion Date, [●]% per annum. |
| * + 1. **Interest Rate:** | * + - * 1. The applicable Margin *plus* [six (6)]-month (or any other period agreed between the Borrower and the Intercreditor Agent) [*insert applicable benchmark and any fallback options*][[47]](#footnote-48) calculated on the basis of the actual number of days elapsed in each Interest Period and a year of [360/365][[48]](#footnote-49) days.         2. [Interest during construction (being interest which accrues and is payable on interest payment dates prior to the first repayment date of the Term Loan A Facility) [is a Project Cost] / [will be capitalised].][[49]](#footnote-50) |
| * + 1. **Interest Period:****[[50]](#footnote-51)** | [ ] Months or any other period agreed between the Borrower and the Intercreditor Agent. |
| * + 1. **Fees:** | *Commitment Fee*:   * + - * 1. [●]% per annum on the undrawn and uncancelled portion of the facility amount.         2. Commitment fees will accrue on and from [the Signing Date] until the last day of the Term Loan A Facility Availability Period and be payable on each Interest Payment Date, on the last day of the Term Loan A Facility Availability Period and on the cancelled amount of the Term Loan A Facility at the time a full cancellation is effective, in arrears.       1. *Arrangement Fee*:          1. [●]% of the total commitments under the Term Loan A Facility as at [Financial Close].          2. Arrangement fees will be payable from the proceeds of the first Utilisation under the Term Loan A Facility.   [*Any other fees to be inserted, for example, agency fees, security trustee fees and account bank fees*] |
| * + 1. **Availability Period:** | From [the date of the Agreement] to [the earlier of [[•] days after] (i) the [Financial Completion Date/Project Completion Date] and (ii) the Longstop Date][[51]](#footnote-52). |
| * + 1. **Minimum Amount of each Utilisation:** | Each Utilisation shall be in a minimum amount of [*insert amount*]. |
| * + 1. **Frequency of Utilisations:** | No more than one Utilisation may be requested in each calendar [month]/[quarter][[52]](#footnote-53). |
| * + 1. **Purpose:** | To fund the payment of Project Costs.[[53]](#footnote-54) [[54]](#footnote-55) |
| * + 1. **Project Costs:** | [Costs (as detailed in the relevant budgets and agreed with the Intercreditor Agent) of developing, financing, constructing and commissioning the [Plant], including construction and commissioning costs, development costs and fees, pre-completion working capital, contingencies, financing costs during construction[[55]](#footnote-56) [[56]](#footnote-57), [initial funding of reserve accounts][[57]](#footnote-58), costs of obtaining any required consents, operating costs up to the Commercial Operations Date, insurance costs, tax, [*insert others*].][[58]](#footnote-59) |

* 1. [WORKING CAPITAL FACILITY

|  |  |
| --- | --- |
| * + 1. **Facility:** | * + - 1. Revolving [loan/credit][[59]](#footnote-60) facility [which may be utilised by way of: |
|  | * + - * 1. drawing of loans; [and] |
|  | * + - * 1. [issue of letters of credit.]] |
| * + 1. **Amount:** | * + - 1. [*Insert currency and amount of revolving facility*] [to be utilised [as follows: |
|  | * + - * 1. in the case of Loans [and Letters of Credit]] in [*insert currency*][; and] |
|  | * + - * 1. [in the case of Letters of Credit in [*insert currency*].] |
| * + 1. **Margin:** | [•]% per annum. |
| * + 1. **Interest Rate:** | The applicable Margin *plus* [six (6)]-month (or any other period agreed between the Borrower and the Intercreditor Agent) [*insert applicable benchmark*][[60]](#footnote-61) calculated on the basis of the actual number of days elapsed in each Interest Period and a year of [360/365] days. |
| * + 1. **Interest Period:** | [Six (6)] Months or any other period agreed between the Borrower and the Intercreditor Agent. |
| * + 1. **Fees:** | *Commitment Fee*:   * + - * 1. [•]% per annum on the undrawn and uncancelled portion of the facility amount.         2. Commitment fees will accrue on and from [*start of Working Capital Facility Availability Period*] until the last day of the Working Capital Facility Availability Period and be payable on each Interest Payment Date, on the last day of the Working Capital Facility Availability Period and on the cancelled amount of the Working Capital Facility at the time a full cancellation is effective, in arrears.   [*Any other fees to be inserted, for example, agency fees*] |
| * + 1. **[Letter of Credit Fee:****[[61]](#footnote-62)** | [   ]% per annum payable quarterly in [arrear/advance] (or such shorter period ending on the relevant expiry date). Accrued letter of credit fee is also payable on the cancelled amount of any Lender's [Working Capital Facility] Commitment at the time a cancellation in full is effective.] |
| * + 1. **Availability Period:** | From [the date of the Agreement]/[Commercial Operation Date][[62]](#footnote-63) to [•]. |
| * + 1. **Minimum Amount of each Utilisation:** | Each Utilisation shall be in a minimum amount of [*insert amount*]. |
| * + 1. **Frequency of Utilisations:** | No more than [•] Utilisation(s) may be requested in each calendar month[[63]](#footnote-64). |
| * + 1. **Purpose:** | To fund working capital requirements of the Project [*until* [*insert date*]]. |
| * + 1. **[Clean Down:** | [*insert an annual clean-down requirement*].] |

* 1. [STANDBY FACILITY

|  |  |
| --- | --- |
| * + 1. **Facility:** | * + - 1. Contingent term loan facility. |
| * + 1. **Amount:** | * + - 1. [*Insert currency and amount of the facility*]. |
| * + 1. **Margin:** | [●]% per annum. |
| * + 1. **Interest Rate:** | The applicable Margin *plus* [six (6)]-month (or any other period agreed between the Project Company and the Intercreditor Agent) [*insert applicable benchmark*][[64]](#footnote-65) calculated on the basis of the actual number of days elapsed in each Interest Period and a year of [360/365] days. |
| * + 1. **Interest Period:** | [Six (6)] Months or any other period agreed between the Project Company and the Intercreditor Agent. |
| * + 1. **Fees:** | * + - 1. *Commitment Fee:*          1. [●]% per annum on the undrawn and uncancelled portion of the facility amount.          2. Commitment fees will accrue on and from [*start of Standby Facility Availability Period*] until the last day of the Standby Facility Availability Period and be payable on each Interest Payment Date, on the last day of the Standby Facility Availability Period and on the cancelled amount of the Standby Facility at the time a full cancellation is effective, in arrears.   [*Any other fees to be inserted, for example, agency fees*] |
| * + 1. **Availability Period:** | From [the date of the Agreement] to [the earlier of [[●] days after] (i) the [Financial Completion Date/Project Completion Date] and (ii) the Longstop Date][[65]](#footnote-66). |
| * + 1. **Minimum Amount of each Utilisation:** | Each Utilisation shall be in a minimum amount of [*insert amount*]. |
| * + 1. **Frequency of Utilisations:** | No more than [•] Utilisation(s) may be requested. |
| * + 1. **Purpose:** | To fund Project Cost overruns.] |

* 1. [EQUITY BRIDGE FACILITY

|  |  |
| --- | --- |
| * + 1. **Facility:** | * + - 1. Term loan facility. |
| * + 1. **Guarantor/Credit Support Provider:** | * + - 1. Sponsors/Shareholders. |
| * + 1. **Amount:** | * + - 1. [*Insert currency and amount of the facility*]. |
| * + 1. **Margin:** | [●]% per annum. |
| * + 1. **Interest Rate:** | The applicable Margin *plus* [six (6)]-month (or any other period agreed between the Project Company and the Intercreditor Agent) [*insert applicable benchmark*][[66]](#footnote-67) calculated on the basis of the actual number of days elapsed in each Interest Period and a year of [360/365] days. |
| * + 1. **Interest Period:** | [Six (6)] Months or any other period agreed between the Project Company and the Intercreditor Agent. |
| * + 1. **Fees:** | * + - 1. *Commitment Fee:*          1. [●]% per annum on the undrawn and uncancelled portion of the facility amount.          2. Commitment fees will accrue on and from [*start of Equity Bridge Facility Availability Period*] until the last day of the Equity Bridge Facility Availability Period and be payable on each Interest Payment Date, on the last day of the Equity Bridge Facility Availability Period and on the cancelled amount of the Equity Bridge Facility at the time a full cancellation is effective, in arrears.   [*Any other fees to be inserted, for example, agency fees*] |
| * + 1. **Availability Period:** | From [the date of this Agreement ] to [●]. |
| * + 1. **Minimum Amount of each Utilisation:** | Each Utilisation shall be in a minimum amount of [*insert amount*]. |
| * + 1. **Frequency of Utilisations:** | No more than [•] Utilisation(s) may be requested in each calendar month[[67]](#footnote-68). |
| * + 1. **Purpose:** | To fund Project Costs. |
| * + 1. **Priority of Lenders' claims:** | Subordinated to the Term Loan Facility [and [*insert other senior Facilities*]].] |

* 1. [ECA FACILITY[[68]](#footnote-69) - [*insert name of ECA*]

|  |  |
| --- | --- |
| * + 1. **Facility:** | * + - 1. Term loan facility. |
| * + 1. **Amount:** | * + - 1. [*Insert currency and amount of the facility*]. |
| * + 1. **Margin:** | [●]% per annum. |
| * + 1. **Interest Rate:** | The applicable Margin *plus* [six (6)]-month (or any other period agreed between the Borrower and the Intercreditor Agent) [*insert applicable benchmark*][[69]](#footnote-70) calculated on the basis of the actual number of days elapsed in each Interest Period and a year of [360/365] days. |
| * + 1. **Interest Period:** | [Six (6)] Months or any other period agreed between the Borrower and the Intercreditor Agent. |
| * + 1. **Fees:** | * + - 1. *Commitment Fee:*          1. [●]% per annum on the undrawn and uncancelled portion of the facility amount.          2. Commitment fees will accrue on and from [*start of ECA Facility Availability Period*] until the last day of the ECA Facility Availability Period and be payable on each Interest Payment Date, on the last day of the ECA Facility Availability Period and on the cancelled amount of the ECA Facility at the time a full cancellation is effective, in arrears.   [*Any other fees to be inserted, for example, agency fees*] |
| * + 1. **ECA Premium:** | * + - 1. [•] / [To be agreed between the Project Company and the relevant ECA]. |
| * + 1. **Availability Period:** | From [the date of the Agreement] to [the date falling [one month] prior to the Final Maturity Date]. |
| * + 1. **Minimum Amount of each Utilisation:** | Each Utilisation shall be in a minimum amount of [*insert amount*]. |
| * + 1. **Frequency of Utilisations:** | No more than [•] Utilisation(s) may be requested in each calendar month[[70]](#footnote-71). |
| * + 1. **Purpose:** | (i) To fund payments in an amount not exceeding [[•]% of] the total amount to be paid to the relevant [eligible exporter] under an [eligible contract] for the purpose of purchasing [eligible contents[[71]](#footnote-72)][; and  (ii) to pay [up to [•]% of] the ECA Premium].] |

* 1. [DFI FACILITY[[72]](#footnote-73) - [*insert name of DFI*]

|  |  |
| --- | --- |
| * + 1. **Facility:** | * + - 1. Term loan facility. |
| * + 1. **Amount:** | * + - 1. [*Insert currency and amount of the facility*]. |
| * + 1. **Margin:** | [●]% per annum. |
| * + 1. **Interest Rate:** | The applicable Margin *plus* [six (6)]-month (or any other period agreed between the Borrower and the Intercreditor Agent) [*insert applicable benchmark*][[73]](#footnote-74) calculated on the basis of the actual number of days elapsed in each Interest Period and a year of [360/365] days. |
| * + 1. **Interest Period:** | [Six (6)] Months or any other period agreed between the Borrower and the Intercreditor Agent. |
| * + 1. **Fees:** | * + - 1. *Commitment Fee:*          1. [●]% per annum on the undrawn and uncancelled portion of the facility amount.          2. Commitment fees will accrue on and from [*start of DFI Facility Availability Period*] until the last day of the DFI Facility Availability Period and be payable on each Interest Payment Date, on the last day of the DFI Facility Availability Period and on the cancelled amount of the DFI Facility at the time a full cancellation is effective, in arrears.   [*Any other fees to be inserted, for example, agency fees*] |
| * + 1. **DFI Premium:** | * + - 1. [●] / [To be agreed between the Project Company and the relevant DFI]. |
| * + 1. **Availability Period:** | From [the date of the Agreement] to [the date falling [one month] prior to the Final Maturity Date]. |
| * + 1. **Minimum Amount of each Utilisation:** | Each Utilisation shall be in a minimum amount of [*insert amount*]. |
| * + 1. **Frequency of Utilisations:** | No more than [●] Utilisation(s) may be requested in each calendar month[[74]](#footnote-75). |
| * + 1. **Purpose:** | To fund Project Costs.] |

* 1. [VAT/GST FACILITY

|  |  |
| --- | --- |
| * + 1. **VAT/GST Facility:** | * + - 1. [Term / Revolving] loan facility. |
| * + 1. **Amount:** | * + - 1. [*Insert currency and amount of the facility*]. |
| * + 1. **Margin:** | [●]% per annum. |
| * + 1. **Interest Rate:** | The applicable Margin *plus* [six (6)]-month (or any other period agreed between the Borrower and the Intercreditor Agent) [*insert applicable benchmark*][[75]](#footnote-76) calculated on the basis of the actual number of days elapsed in each Interest Period and a year of [360/365] days. |
| * + 1. **Interest Period:** | [Six (6)] Months or any other period agreed between the Borrower and the Intercreditor Agent. |
| * + 1. **Fees:** | * + - 1. *Commitment Fee:*          1. [●]% per annum on the undrawn and uncancelled portion of the facility amount.          2. Commitment fees will accrue on and from [*start of VAT/GST Facility Availability Period*] until the last day of the VAT/GST Facility Availability Period and be payable on each Interest Payment Date, on the last day of the VAT/GST Facility Availability Period and on the cancelled amount of the VAT/GST Facility at the time a full cancellation is effective, in arrears.   [*Any other fees to be inserted, for example, agency fees*] |
| * + 1. **Availability Period:** | From [Financial Close] to [Longstop Date] / [Project Completion Date][Financial Completion Date]. |
| * + 1. **Minimum Amount of each Utilisation:** | Each Utilisation shall be in a minimum amount of [*insert amount*]. |
| * + 1. **Maximum number of Utilisations:** | No more than [•] Utilisation(s) may be requested. |
| * + 1. **Purpose** | To fund value added tax / goods and services tax for payments which are required to be made in connection with Project Costs during the Construction Period until such tax payments are reimbursed by the tax authorities.] |

* 1. REPAYMENT[[76]](#footnote-77)

|  |  |
| --- | --- |
| * + 1. **Final Maturity Date:** | [                    ]. |
| * + 1. **Term Loan A Facility Repayment:** | |  |  | | --- | --- | | [The Loans will be repaid [in [semi-annual] instalments on the dates and in the amounts specified in the Schedule to this Term Sheet] / [in instalments as follows: | | | | | **Repayment Date** | **Repayment Instalment** | | [*Insert date*] | [*percentage/fraction/amount*]] | | The first repayment date shall be agreed with the Project Company [but shall not be later than [six] months following the Scheduled [Project Completion Date].] | | |
| * + 1. [**Working Capital Facility Repayment:** | [Each Loan shall be repaid on the last day of its Interest Period.] / [The Working Capital Facility shall be repaid by the [Final Maturity Date].] |
| * + 1. [**Standby Facility Repayment:** | [*Insert repayment schedule*.]] |
| * + 1. [**Equity Bridge Facility Repayment:** | [*Insert repayment schedule*.]] |
| * + 1. [**ECA Facility Repayment:** | [*Insert repayment schedule*.]] |
| * + 1. [**VAT/GST Facility Repayment:** | [*Insert repayment schedule*.]] |

* 1. HEDGING

|  |  |
| --- | --- |
| * + 1. **Hedging Strategy[[77]](#footnote-78):** | ***Interest rate hedging***   * + - * 1. [Hedging strategy to be agreed with the [Mandated Lead Arrangers/Lenders] prior to the Signing Date.         2. Hedge counterparties may be any Mandated Lead Arranger, Lender or their affiliates [or any other counterparty] with, in any case, a long-term credit rating of [•] (S&P or Fitch) or [•] (Moody's) or better.         3. The hedge counterparties will accede to the relevant Finance Documents as hedge counterparties, have customary voting rights to be agreed post acceleration in respect of termination amounts owing to them under the hedging contracts and will be *pari passu* beneficiaries of the Lenders' security package.]   [***Other hedging***  The Project Company shall enter into transactions to hedge:   * + - * 1. [*currency*]; and         2. [*commodity prices*].   Hedging strategy to be agreed with the [Mandated Lead Arrangers/Lenders] prior to the Signing Date.] |

1. OTHER TERMS

|  |  |
| --- | --- |
| * 1. Documentation: | The Facilit[y/ies] will be made available under a common terms agreement based on the current form of the [Infrastructure Asia Common Terms Agreement], updated to reflect any changes in market practice for syndicated loans generally, and one or more facilit[y/ies] agreement, and other finance documents, in each case in form and substance satisfactory to the [Mandated Lead Arranger[s][and Lenders]]. |
| * 1. Prepayment and Cancellation: | * + 1. **Illegality**   In the event that it [is or will become][becomes] unlawful in any applicable jurisdiction for a Lender to perform its obligations or to fund or maintain its participation, the relevant Lender shall promptly give notice to the Intercreditor Agent of such illegality, and upon the Intercreditor Agent notifying the Project Company of such illegality, the Commitment of that Lender will be immediately cancelled and its participation in the Loans will be prepaid (to the extent that such participation has not been transferred pursuant to the provisions of the Agreement). |
|  | * + 1. **Increased Costs, Tax Gross Up and Tax Indemnity**   The Project Company may cancel the Commitment of and prepay any Lender that makes a claim under any of these provisions if the Project Company has demonstrated to the reasonable satisfaction of the Intercreditor Agent that, immediately following such cancellation and prepayment:   * + - * 1. there will not be a Funding Shortfall[[78]](#footnote-79);         2. the Project Completion Date will occur on or before the [Scheduled Project Completion Date]; and         3. no Default is continuing or would arise as a result of such cancellation and prepayment. |
|  | * + 1. **Mandatory Prepayment**   The Project Company shall apply:[[79]](#footnote-80) [[80]](#footnote-81)   * + - * 1. all proceeds of claim under physical loss or damage insurances which either (1) may not be applied in repair or reinstatement of the asset lost or damaged or (2) exceed the cost of such repair or reinstatement in accordance with "Insurance Proceeds and Performance Liquidated Damages" below to restore the Ratios to at least [*insert required levels*][the levels required as at Financial Close][[81]](#footnote-82);         2. all compensation received by the Project Company[, the Sponsors or the Shareholders] (except performance liquidated damages) in respect of (A) the seizure, compulsory acquisition, nationalisation or expropriation of any part of the project (or any interest thereof) or the share capital of the Project Company, (B) any breach of warranty claims or liquidated damages (other than delay liquidated damages) paid or payable by the Construction Contractor, (C) any sum paid in respect of the release, modification, suspension or extinguishment of rights in relation to any part of the Project, any restrictions affecting any part of the Project or the grant of any easement rights over the Project, and other similar events provided for in the Finance Documents;         3. all performance liquidated damages received by the Project Company from [any project party under any Project Document] [[82]](#footnote-83) which (1) are not applied in reinvestment of the Project or (2) exceed the cost of such reinvestment in accordance with "Insurance Proceeds and Performance Liquidated Damages" below to restore the Ratios to at least [*insert required levels*][the levels required as at Financial Close] [unless such performance liquidated damages [are payable to any other project party as a result of the circumstance triggering the receipt by the Project Company of such payment]; [and]         4. [*Include any other mandatory prepayment events, e.g. Change of Control[[83]](#footnote-84), asset disposals above a certain threshold, sanctions event which does not constitute an illegality (and if there is an ECA Facility, loss ECA cover)*],   in prepayment of the [Facilities][[84]](#footnote-85)[, [in inverse order of maturity (other than in the case of paragraph [(iii)][*insert others*] above which shall be applied rateably across outstanding instalments under each Facility).]  Any prepayment shall be made together with break costs (if any) and the costs of terminating hedging agreements (if required in order to comply with the Hedging Strategy)[[85]](#footnote-86). |
|  | * + 1. **Voluntary** **Cancellation**[[86]](#footnote-87)   The Project Company may, on not less than [    ] Business Days' prior notice (or such shorter period as the Majority Lenders may agree), cancel the whole or any part (being a minimum of [*insert base currency and minimum amount*]) of [an/the] Available Facility, provided that the Project Company has demonstrated to the reasonable satisfaction of the Intercreditor Agent that, immediately following such cancellation:   * + - * 1. there will not be a Funding Shortfall;         2. the Project Completion Date will occur on or before the [Scheduled Project Completion Date]; and         3. no Default is continuing or would arise as a result of such cancellation. |
|  | * + 1. **Voluntary prepayment of [Term Loan A Facility] Loans**   The Project Company may, on not less than [•] Business Days' prior notice, prepay [the Facilities] in whole or in part from the credit balance of the Operating Account if:   * + - * 1. prepayment is made following the Project Completion Date;         2. if prepayment is to be made prior to the Project Completion Date, the Project Company has demonstrated to the reasonable satisfaction of the Intercreditor Agent that, immediately following such cancellation: |
|  | * + - 1. there will not be a Funding Shortfall;       2. the Project Completion Date will occur on or before the [Scheduled Project Completion Date]; and       3. no Default is continuing or would arise as a result of such prepayment; and          1. the amount of such prepayment is not less than [•]. |
|  | * + 1. **Other conditions of Prepayment**        - 1. Prepayments are to be applied against repayment instalments [in inverse order of maturity] / [rateably].[[87]](#footnote-88)          2. Any prepayment shall be made together with the costs of terminating hedging agreements (if required in order to comply with the Hedging Strategy)[[88]](#footnote-89).          3. [The Project Company may prepay the whole of the [Term Loan A Facility]/[Facilities] by way of a refinancing at any time.] |
|  | * + 1. **Cancellation at the end of the Availability Period**   Any undrawn portion of the [Facilit[y/ies]] shall be automatically cancelled at the end of the [relevant] Availability Period. |
|  | * + 1. **No reinstatement**   Amounts cancelled may not be reinstated. |
| * 1. Insurance Proceeds and Performance Liquidated Damages: | * + 1. Subject to (b) below, (x) insurance proceeds under physical loss or damage insurance policies shall be applied in repairing or reinstating the damaged property, but if such proceeds or value of damage to the Project to which such proceeds relate are greater than [•] and (y) performance liquidated damages may be applied towards reinvestment of the Project, in each case only if:        - 1. such repair, reinstatement or reinvestment is made in accordance with a plan delivered by the Project Company and approved by the Intercreditor Agent;          2. (in respect of insurance proceeds only) in the reasonable opinion of the Intercreditor Agent (following consultation with the [Insurance Adviser] and the [Technical Adviser]) the damaged property can be repaired or reinstated in accordance with the reinstatement plan within time limits imposed under the Project Documents and such insurance proceeds (together with any other money then available to the Project Company and committed to such repair or reinstatement) are sufficient to do so;          3. (in respect of insurance proceeds only) the contractual arrangements to effect such repair or reinstatement are satisfactory to the Majority Lenders; and          4. based on a Financial Report following such repair, reinstatement or reinvestment [the Ratios would not be less than [*insert required levels*][those required as at Financial Close][those set out in the most recent Financial Report before the occurrence of such event giving rise to such payment]],   and any excess amounts shall be paid directly to the Intercreditor Agent to be applied in mandatory prepayment of the Facilit[y/ies] to the extent required to restore the Ratios to at least [*insert required levels*][the levels required as at Financial Close].   * + 1. Unless the Majority Lenders agree otherwise, insurance proceeds under physical loss or damage insurance policies in excess of [•] shall be paid directly to the Intercreditor Agent to be applied in mandatory prepayment of the Facilit[y/ies] as specified above to the extent required to restore the Ratios to at least [*insert required levels*][the levels required as at Financial Close].   No amount prepaid from insurance proceeds will be available for redrawing. |

1. COMMON TERMS

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| * 1. Finance Documents: | 1. The Finance Documents will comprise:    1. the Common Terms Agreement;    2. the Facility Agreements;    3. the Security Trust and Intercreditor Deed;    4. [the [Onshore/Offshore] Accounts Agreement];[[89]](#footnote-90)    5. the Security Documents;    6. [direct agreements with the counterparties to the Project Documents][[90]](#footnote-91);    7. [the Shareholder Contribution and Sponsor Support Agreement][[91]](#footnote-92);    8. the Subordination Agreements;    9. [the Shareholder Loan Agreements;]    10. the Fee Letters;    11. the Acceptable Credit Supports;    12. [the Hedging Agreements;]    13. the Accession Undertakings;    14. the Transfer Certificates;    15. the Assignment Agreements; [and]    16. [*any other agreements in relation to the financing of the Project*]. |
| * 1. Security Documents[[92]](#footnote-93): | 1. The Lenders' security package shall include first-ranking security over: |
|  | * 1. [all of the Project Company's interest in the site and all buildings, fixed plant and machinery affixed thereto or situated thereon]; |
|  | * 1. [all of the Project Company's right, title and interest in and to the Project Documents];   2. [the Project Accounts] [(which shall not include the Distributions Account)][[93]](#footnote-94)]; |
|  | * 1. [all of the shares in the Project Company]; |
|  | * 1. [any Shareholder Loan Agreement]; |
|  | * 1. [the Hedging Agreements]; |
|  | * 1. [the insurances and reinsurances]; |
|  | * 1. [all other assets and undertaking of the Project Company]; [and] |
|  | * 1. [*other*][[94]](#footnote-95). |

1. PROJECT ACCOUNTS

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| * 1. Project Accounts[[95]](#footnote-96): | 1. The Project Company will be required to establish and maintain project accounts [onshore and offshore][[96]](#footnote-97) relating to Project cashflows, including:    1. Disbursement Account;    2. Operating Account;    3. Compensation and Insurance Proceeds Account;    4. Debt Service Reserve Account;    5. [Maintenance Reserve Account;] and    6. Distributions Account. |
| * 1. Disbursement Account[[97]](#footnote-98): | ***Credits***: Loans, equity, amounts received under hedging agreements prior to the Project Completion Date, project revenues (if any) received prior to the Project Completion Date [[98]](#footnote-99) and all other amounts that are received prior to the Project Completion Date that are not required to be paid into any other account.  ***Withdrawals***: To pay Project Costs (prior to the [Project Completion Date]) – then any amounts remaining at the [Project Completion Date] to be paid into the Operating Account [after reserving for any retention sums payable under the Construction Contract]. |
| * 1. Operating Account[[99]](#footnote-100): | ***Credits***: Project revenues[[100]](#footnote-101), Loans (if any), amounts received under Hedging Agreements, insurance proceeds received in respect of loss of revenue insurance or third party insurance (if it is reimbursing amounts already paid by the Project Company to third parties), [any delay or supplier liquidated damages payable to the Project Company pursuant to the [Project Documents] except to the extent on-paid in respect of a liability under the [concession/offtake] agreement] and all other amounts that are received on and from the [Financial Completion Date] that are not required to be paid into any other account.  ***Withdrawals***: In accordance with the Cash Flow Waterfall (see below). |
| * 1. Compensation and Insurance Proceeds Account: | ***Credits***: Proceeds from insurance (other than loss of revenue or third-party insurance)[[101]](#footnote-102) or compensation (including performance liquidated damages, compensation for nationalisation/expropriation and termination compensation but excluding liquidated damages for delay).  ***Withdrawals***: To repair/reinstate/replace assets (subject to agreed thresholds) and thereafter, for mandatory prepayment. |
| * 1. Debt Service Reserve Account: | ***Credits***: From [the Financial Completion Date]/[Project Completion Date] until the date on which the Facilit[y/ies] is/are repaid in full, the Project Company shall ensure that the Debt Service Reserve Account is funded [either by retaining funds from the Cash Flow Waterfall, by deposit of cash or by provision of Acceptable Credit Support] in an amount not less than the [[ ]-monthly] scheduled debt service falling due and payable on the next repayment date.  ***Withdrawals***: To meet payments of scheduled debt service (if insufficient funds are available in accordance with the Cash Flow Waterfall).  On any repayment date, any excess amounts above the required debt service reserve balance may be transferred to the Operating Account. |
| * 1. [Maintenance Reserve Account[[102]](#footnote-103): | ***Credits***: The Project Company shall ensure that the Maintenance Reserve Account is funded by the required time [either by retaining funds from the Cash Flow Waterfall, by deposit of cash or by provision of Acceptable Credit Support] in an amount [*method for calculating required amount to be specified*][[103]](#footnote-104).  ***Withdrawals***: to pay major maintenance costs.  At agreed times, any excess amounts above the required maintenance reserve balance may be transferred to the Operating Account.] |
| * 1. Distributions Account[[104]](#footnote-105): | 1. ***Credits***: From the Operating Account in accordance with the Cash Flow Waterfall.   ***Withdrawals***: Withdrawals may be made freely at any time [and the Distributions Account will not be subject to any security interest in favour of the Finance Parties]. |
| * 1. Cash Flow Waterfall[[105]](#footnote-106): | 1. From the [Scheduled] Project Completion Date, withdrawals from the Operating Account shall be made for the following purposes in the following order of priority:    1. Operating Costs[[106]](#footnote-107);    2. fees, costs and expenses of the Finance Parties;    3. scheduled payments of interest (including scheduled amounts payable under Hedging Agreements);    4. scheduled payments of principal (and hedging termination payments);    5. transfers to the Maintenance Reserve Account to meet required balance;    6. transfers to the Debt Service Reserve Account to meet required balance;    7. prepayments for illegality[[107]](#footnote-108);    8. [cash sweep;][[108]](#footnote-109)    9. voluntary prepayments; and    10. if Distribution Tests are met, transfers to the Distributions Account. |
| * 1. [Acceptable Credit Support][[109]](#footnote-110): | 1. [In respect of the Debt Service Reserve Account [and the Maintenance Reserve Account], an on demand letter of credit or bank guarantee in favour of the Lenders from a bank or banks which (i) is incorporated in an OECD member country [or equivalent] and (ii) has a long term credit rating of at least [•] (S&P or Fitch) or [•] (Moody's) equivalent from time to time provided that:    1. such letter of credit or bank guarantee is in a form acceptable to the Lenders and is unconditional and payable on demand;    2. such letter of credit or bank guarantee is non-recourse to the Project Company or its assets;    3. the Project Company has no liability in respect of the cost of procuring any such letter of credit or bank guarantee; and    4. such letter of credit or bank guarantee has a minimum maturity of 364 days from the date of issuance. |
| * 1. Distribution Tests: | 1. Subject to the following conditions being satisfied, amounts may be paid from the Operating Account to the Distributions Account in accordance with the Cash Flow Waterfall:    1. DSCR[[110]](#footnote-111) greater than [•];    2. [LLCR greater than [•];][[111]](#footnote-112)    3. [the first repayment date under the Term Loan A Facility has occurred;]    4. the [Project Completion Date]/[Financial Completion Date] has occurred;    5. the Debt Service Reserve Account [and the Maintenance Reserve Account] are fully funded [whether in cash or by way of Acceptable Credit Support];    6. the Project Company has made all mandatory prepayments then outstanding;    7. such restricted payment is permitted by applicable law; and    8. no Default is continuing or would result from making the relevant transfer. |
|  | 1. Transfers to the Distributions Account must be made within [30] Business Days of a repayment date and the amount so transferred may not exceed the lower of the amount standing to the credit of the Operations Account on the relevant Repayment Date (after effecting all payments with a higher priority) and the amount standing to the credit of the Operations Account on the date of such transfer. |

1. FINANCIAL MODEL, Base Case, Financial Reports AND RATIOS[[112]](#footnote-113)

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| --- | --- |
| * 1. Financial Model: | * 1. The Financial Model will be agreed between the Project Company and the Intercreditor Agent (with input from the Model Auditor) at the Signing Date and will be based upon construction and operating assumptions agreed by the Intercreditor Agent (with input from the Technical Adviser). The Project Company will maintain the Financial Model.   2. The Project Company may only modify the Financial Model with the prior consent of the Intercreditor Agent (acting on the instructions of the Majority Lenders).   3. The Project Company or the Intercreditor Agent may each propose structural changes to the Financial Model (accompanied by the reasons for such proposals), provided that, in the case of the Intercreditor Agent, for the purposes only to correct any error or deficiency or to adjust any formula logic or methodology for making calculations in accordance with the Finance Documents, and any agreed changes shall be reflected in the Financial Model. |
| * 1. Base Case[[113]](#footnote-114): | * 1. The financial projections produced by the Financial Model at the Signing Date, as amended to take account of any revisions produced by the Project Company and agreed by the Intercreditor Agent to incorporate any updated assumptions in the manner set out in paragraph (b) below prior to each Calculation Date.   2. Updates to assumptions may be made as follows:   [*protocol for updating of assumptions to be agreed*][[114]](#footnote-115). |
| * 1. Financial Report[[115]](#footnote-116): | * 1. The Project Company shall deliver to the Intercreditor Agent a draft Financial Report (in the form agreed prior to the Signing Date) [before][after] each Calculation Date.   2. Each draft Financial Report shall:      1. contain a calculation of each Ratio as at the relevant Calculation Date;      2. attach the updated Base Case and a list of all assumptions on which it is based;      3. specify any amount permitted under the Cash Waterfall to be transferred from the Operating Account to the Distribution Account and confirm that the Distribution Tests have been met in respect of such transfer; and      4. set out in reasonable detail the nature and amount of components of each Ratio. |
| * 1. Calculation Date:[[116]](#footnote-117) | The Project Completion Date, each Repayment Date and [*insert other dates if required*][[117]](#footnote-118). |
| * 1. Ratios:[[118]](#footnote-119) | * 1. Debt Service Cover Ratio ("**DSCR**")      + - 1. *Historic* *DSCR*[[119]](#footnote-120)   For the [six/12 month] period preceding a Calculation Date [(or, in the case of the first Calculation Date following the Project Operation Date, the period from the Project Operation Date to that Calculation Date)] the ratio of:   1. Available Cashflow during such period; to 2. Debt Service [including amounts payable in respect of the Working Capital Facility (to the extent not available to be redrawn)] payable during such period.    * + - 1. [*Projected* *DSCR*   For the [six/12 month] period following a Calculation Date the ratio of:   1. projected Available Cashflow during such period; to 2. projected Debt Service [including amounts payable in respect of the Working Capital Facility (to the extent not available to be redrawn)][[120]](#footnote-121) payable during such period.][[121]](#footnote-122)    * 1. [Loan Life Cover Ratio ("**LLCR**")   As at a Calculation Date, the ratio of:   * + - * 1. the Discounted[[122]](#footnote-123) Cashflow for Debt Service plus any cash balance or letters of credit or bank guarantee standing to the credit of [the Debt Service Reserve Account] [and the] [Operating Account] (without double counting) on that Calculation Date; to         2. the aggregate of the amounts outstanding under the [Facilit[y/ies]] on that Calculation Date,   in each case, having taken into account all repayments to be made on that Calculation Date.][[123]](#footnote-124)  Each of the Ratios shall be tested by reference to the most updated Base Case as agreed between the Borrower and the Intercreditor Agent. |
| * 1. [Equity Cure: | * + 1. If an Event of Default has occurred or would occur as a result of the Historic DSCR on a Calculation Date being less than [ ]:1, the Sponsors/Shareholders may (but are not obliged to) prevent or cure that Event of Default by procuring the contribution of additional Equity to the Borrower so that, upon a re-calculation in accordance with (b) below, the Historic DSCR is at least [ ]:1 (the "**Equity Cure**").     2. The Historic DSCR shall be calculated or re-calculated for the relevant Calculation Period as if [*insert the manner in which Equity Cure should be applied*] [by an amount equal to the additional Equity received by the Borrower on the first day of such Calculation Period].[[124]](#footnote-125)     3. Any Equity Cure will be subject to the following conditions: (i) the Borrower notifies the Intercreditor Agent of its intention to procure an Equity Cure within [ ] days of the relevant Calculation Date; (ii) the Borrower receives the proceeds of such Equity Cure within [ ] days of such Calculation Date; (iii) the Sponsors/Shareholders shall not be entitled to procure Equity Cures in respect of [ ] consecutive non-compliances or [ ] separate non-compliances in aggregate; and (iv) no declarations or payments of dividends or distributions or repayment of shareholder loans shall be permitted in respect of any Calculation Date for which an Equity Cure was made.] |

1. REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

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| --- | --- |
| * 1. Representations: | The Borrower will make representations customary for facilities of this nature (subject to such materiality or other qualifications and exceptions as may be agreed) on the date of the Agreement and [in the case of ( ) to ( ) (the "**Repeating Representations**")][[125]](#footnote-126) on the date of each Utilisation Request, Financial Close, each Utilisation Date and the first day of each Interest Period, including:[[126]](#footnote-127) [[127]](#footnote-128) |
|  | * + 1. status; |
|  | * + 1. binding obligations; |
|  | * + 1. non conflict with other obligations; |
|  | * + 1. power and authority; |
|  | * + 1. validity and admissibility in evidence; |
|  | * + 1. governing law and enforcement; |
|  | * + 1. Transaction Documents contain material terms of the Project and are in full force and effect; |
|  | * + 1. no other business or agreements; |
|  | * + 1. security: (i) no security over any of its assets other than that created by the Security Documents; (ii) ranking of security; (iii) validly created; (iv) good and marketable title; (v) legal and beneficial ownership; (vi) shares not subject to any option or similar rights; and (vii) no trustee or agency relationship; |
|  | * + 1. consents/authorisations; |
|  | * + 1. insolvency; |
|  | * + 1. taxation: (i) no filing or stamp taxes; (ii) no deduction of tax; (iii) tax compliance and no tax claims; and (v) tax residence; |
|  | * + 1. no financial indebtedness; |
|  | * + 1. no default [or other adverse event]; |
|  | * + 1. no misleading information; |
|  | * + 1. financial statements; |
|  | * + 1. Financial Model (prepared in good faith and consistent with budgets); |
|  | * + 1. *pari passu* ranking; |
|  | * + 1. no proceedings pending or threatened; |
|  | * + 1. environmental compliance and no environmental claims[[128]](#footnote-129);     2. insurances in full force and effect (and insurance compliance);     3. [title to assets][[129]](#footnote-130);     4. intellectual property;     5. [no immunity from suit, execution, attachment or other legal process][[130]](#footnote-131);     6. [private and commercial acts];     7. [no force majeure event][[131]](#footnote-132);     8. ownership and no subsidiaries;     9. compliance with applicable laws and good industry standards;     10. no bribery/corruption;     11. no involvement in terrorism or money laundering;     12. sanctions; [and] |
|  | * + 1. [*others*]. |
| * 1. Information Undertakings: | The Project Company shall supply each of the following (without limitation):  ***Financial statements*** |
|  | * + 1. as soon as they become available, but in any event within [       ] days of the end of its financial years, its [consolidated] audited financial statements [together with those of each Shareholder/Sponsor/[Major Project Participant]][[132]](#footnote-133); |
|  | * + 1. as soon as they become available, but in any event within [       ] days of the end of its financial half years its unaudited consolidated financial statements [together with those of each Shareholder/Sponsor/[Major Project Participant]]; |
|  | * + 1. [as soon as they become available, but in any event within [•] days after the end of each [quarter of each of its financial years]/[month] its financial statements/management accounts for that period][[133]](#footnote-134); and     2. with each set of consolidated financial statements, a compliance certificate signed by two directors of the Project Company [and, in the case of the audited consolidated financial statements [reported on by the [Project Company][*insert relevant party(ies)*]'s auditors in the form agreed by the Project Company and the Lenders prior to the date of the Agreement]/[signed by the [Project Company][*insert relevant party(ies)*]'s auditors]]; |
|  | 1. ***Project reports***    * 1. [monthly] / [quarterly] construction reports (re: progress and costs to budget) [in the agreed form][[134]](#footnote-135);      2. [environmental reports][[135]](#footnote-136);      3. [quarterly] / [semi-annual] operating reports (including performance and costs to budget) [in the agreed form]; 2. ***Budgets[[136]](#footnote-137)***    * 1. construction and operating budgets; 3. ***Financial Model and Financial Reports***    * 1. maintenance and modifications to Financial Model (see "Financial Model" above);      2. delivery of Financial Reports (and process for approval and disputes); 4. ***Other information*** |
|  | * + 1. [management presentations;]     2. details of any material litigation, arbitration or administrative proceedings or material judgment (current, threatened or pending); |
|  | * + 1. copies of amendments to and material notices issued in relation to Project Documents, insurances and authorisations/consents;     2. information and documents relating to insurances;     3. notice of any Default;     4. notice of any force majeure event;     5. [notice of specific events, e.g. which may affect the authorisations/consents, strikes, events relating to loss or damage to assets or which give rise to any compensation, environmental and social notifications[[137]](#footnote-138)];     6. [notice of any material adverse change[[138]](#footnote-139)];     7. [notice of any change to a [Shareholder's / Sponsor's] interest in the Project Company];     8. [on request (and on reasonable notice), permit the Finance Parties (and their advisers and representatives) to visit and inspect the Project site and premises and grant access to employees, agents and workers of the Borrower of up to (before the Project Completion Date) [●] occasion(s) and (after the Project Completion Date) [●] occasion(s) per calendar year and when a Default is continuing];     9. such other information regarding the financial condition, business and operations of the Project Company[, the Shareholders] [and] [the Sponsors] or the Project as any Finance Party may reasonably request; |
|  | * + 1. on request, a directors' certificate that no Default is continuing;     2. notice of change in the authorised signatories of the Project Company[, the Shareholders] [and] [the Sponsors] signed by a director or company secretary of such entity and containing the specimen signature of any new authorised signatories; and |
|  | * + 1. all documents dispatched by the Project Company to its shareholders (or any class of them) or its creditors generally. |
|  | The Project Company and each [Shareholder][Sponsor] shall promptly upon the request of the Intercreditor Agent or any Finance Party supply such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself and on behalf of any other Finance Party) or any Finance Party (or prospective new Finance Party) in order for the Intercreditor Agent or such Finance Party (or prospective new Finance Party) to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to the transactions contemplated in the Finance Documents. |
|  | [The Project Company may satisfy its obligations to deliver information to those Finance Parties who agree by posting such information onto a website.] |
| * 1. General Undertakings: | Undertakings customary for facilities of this nature (subject to such materiality or other qualifications and exceptions as may be agreed) will be included in the Agreement in respect of the Project Company [and, where applicable, in relation to the Shareholders/Sponsors][[139]](#footnote-140), including (without limitation):[[140]](#footnote-141) [[141]](#footnote-142) |
|  | 1. ***Positive undertakings***    1. maintenance of status;    2. authorisations/consents; |
|  | * 1. compliance with laws; |
|  | * 1. maintenance of insurance (including to ensure full disclosure);   2. environmental compliance[[142]](#footnote-143) and environmental claims;   3. compliance with anti-corruption laws, counter-terrorism and anti-money laundering laws;   4. compliance with applicable sanctions;   5. taxation compliance and maintenance of tax residence;   6. exercise of rights (maintain and enforce rights)[[143]](#footnote-144);   7. *pari passu* ranking; |
|  | * 1. act in accordance with Reserved Discretions[[144]](#footnote-145);   2. [entry into hedging arrangements];   3. design (where applicable), construction/operation and maintenance of Project in accordance with law, consents, the Transaction Documents and good industry practice;   4. intellectual property;   5. access and inspection;   6. maintenance of records;   7. maintenance of assets, real property and intellectual property;   8. further assurance in relation to transaction security;   9. best efforts to achieve Project Completion Date by Scheduled Project Completion Date;   10. submission of remedial plan in respect of delays or Funding Shortfall;   11. syndication assistance; [and]   12. [*others*].  1. ***Negative undertakings***    1. no other business;    2. no other contracts[[145]](#footnote-146);    3. restrictions on share issuance, redemption, reduction, cancellation;    4. negative pledge; |
|  | * 1. restriction on financial indebtedness;   2. restriction on loans and guarantees;   3. restriction on disposals; |
|  | * 1. restriction on merger; |
|  | * 1. restriction on acquisitions;   2. restriction on corporate changes (financial year end, constitutive documents, issue or alteration of shares);   3. [no amendments/variations/termination to contracts][[146]](#footnote-147);   4. no unbudgeted expenditure [exceeding [•]%of the relevant budgets];   5. no suspension/abandonment of Project;   6. [no waiver/settlement/compromise of claims above a certain threshold][[147]](#footnote-148);   7. restriction on declarations or payments of dividends or distributions or repayment of shareholder loans[[148]](#footnote-149);   8. restriction on opening and maintenance of bank accounts;   9. restriction on claiming immunity; [and]   10. [*others*]. |
| * 1. Events of Default: | Events of default customary for facilities of this nature will be included in the Agreement in respect of the Project Company (subject to such materiality or other qualifications, grace periods and exceptions as may be agreed) [(including without limitation)]: [[149]](#footnote-150) |
|  | * + 1. non-payment unless failure to pay is caused by administrative or technical error and payment is made within [three] Business Days of its due date; |
|  | * + 1. on any Calculation Date, the Historic DSCR is less than [ ]; |
|  | * + 1. failure to comply with any other obligations subject to agreed remedy periods if capable of remedy; |
|  | * + 1. misrepresentation subject to agreed remedy periods if capable of remedy; |
|  | * + 1. termination (or irrevocable notice of termination), suspension, revocation [or material breach] of Project Documents or Finance Documents other than any Project Document or Finance Document that has been discharged or authorisations/consents;     2. cross default [re: Major Project Participants]/[the Project Company, the Sponsors [and the Shareholders]] [, subject to agreed thresholds]; |
|  | * + 1. insolvency [re: Major Project Participants]/[the Project Company, the Sponsors [and the Shareholders]]; |
|  | * + 1. insolvency proceedings [re: Major Project Participants]/[the Project Company, the Sponsors [and the Shareholders]]; |
|  | * + 1. creditors' process [re: Major Project Participants]/[the Project Company, the Sponsors [and the Shareholders]]; |
|  | * + 1. unlawfulness and invalidity;     2. [ownership of Project Company;][[150]](#footnote-151) |
|  | * + 1. repudiation; |
|  | * + 1. [government intervention], nationalisation or expropriation of the Project or the shares in the Project Company; |
|  | * + 1. unlawfulness or invalidity of transaction security;     2. [Project Completion Date]/[Financial Completion Date] has not occurred by the Longstop [Project Completion Date]/[Financial Completion Date] [, or in the [reasonable] opinion of the Technical Adviser will not occur by this date and the Borrower has not proposed an acceptable remedy plan]; |
|  | * + 1. abandonment or destruction of the whole or a material part of the Project [and not reasonably likely to be reinstated under a remedy plan][[151]](#footnote-152);     2. avoidance or suspension of insurance;     3. title to assets; |
|  | * + 1. [*insert any environmental and social related events of default*];     2. [declared company under Part IX of Singapore Companies Act];     3. material adverse change[[152]](#footnote-153); [and] |
|  | * + 1. [*others*].[[153]](#footnote-154) |

1. INTERCREDITOR ISSUES[[154]](#footnote-155)

|  |  |
| --- | --- |
| * 1. Majority Lenders: | * + 1. [66 2/3]% or more of Total Commitments.     2. Provisions requiring all Lender consent to certain customary amendments and waivers will be included. |
| * 1. Assignments and[[155]](#footnote-156) Transfers by Lenders:[[156]](#footnote-157) | * + 1. A Lender may assign any of its rights or transfer by novation any of its rights and obligations to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets. |
|  | * + 1. [A Lender proposing to so assign or transfer shall [consult with the Project Company for no more than [•] days before it makes such assignment or transfer]/[obtain the prior consent of the Project Company to such assignment or transfer, which consent shall not be unreasonably withheld or delayed and shall be deemed given if not expressly refused within [five] Business Days of request unless the assignment or transfer is:        - 1. to another Lender or an Affiliate of a Lender;          2. if the Lender is a fund, to a fund which is a Related Fund of that Lender;          3. made when an Event of Default is continuing; [or          4. made to an entity identified on a pre-approved new lender list (to be agreed prior to the Signing Date).]] |
| * 1. [Replacement of Lender: | A mechanism will be included in the Finance Documents pursuant to which the Project Company may, subject to certain conditions, replace:   * 1. a Lender which has not consented to a waiver or amendment requiring the consent of all Lenders and to which Lenders holding an aggregate of [•]% of the Total Commitments have consented; and/or   2. a Lender to which the Project Company becomes obliged to pay an amount pursuant to the illegality, increased costs or tax gross-up provisions in excess of amounts payable to the other Lenders generally.] |
| * 1. Defaulting Lenders: | The Finance Documents will contain the Loan Market Association recommended provisions relating to:   * 1. Defaulting Lenders, which will include right to cancel commitments, disenfranchisement of Defaulting Lender [and right of replacement][[157]](#footnote-158); and   2. Impaired Agents, which will include lenders' right of replacement and alternative payment provisions. |

1. CONDITIONS PRECEDENT

|  |  |
| --- | --- |
| * 1. Conditions Precedent to first drawdown[[158]](#footnote-159) [[159]](#footnote-160): | These will include the following in form and substance satisfactory to the Intercreditor Agent:  ***Corporate authority***   * 1. certified copies of [each Major Project Participant's][[160]](#footnote-161) constitutional documents;   2. certified copies of board [and shareholders' where required][[161]](#footnote-162) resolutions of [each Major Project Participant][[162]](#footnote-163);   3. specimen signatures for [each Major Project Participant][[163]](#footnote-164);   4. borrowing/guaranteeing certificate from the Project Company [and each Shareholder/Sponsor];   ***Transaction Documents***   * 1. certified copies of all Project Documents (duly executed and in full force and effect);   2. originals of all Finance Documents[[164]](#footnote-165) (duly executed and in full force and effect);   3. evidence that all formalities to give effect to the Security Documents have been carried out (including registrations and filings, payment of stamp, registration or similar taxes, delivery of share certificates, notices and acknowledgements of assignment);   4. all authorisations[[165]](#footnote-166) for the Project have been obtained and are unconditional (or if conditional, the conditions have been satisfied or waived) and in full force and effect;   ***Insurance***   * 1. evidence that all construction period insurances [and reinsurances][[166]](#footnote-167) are in full force and effect;   2. copy of duly executed insurance broker's undertaking in the agreed form;   ***Advisers' reports***   * 1. a copy of [*each Adviser's report to be listed*][[167]](#footnote-168);   2. [a copy of each Adviser's appointment letter];   ***Legal opinions***   * 1. legal opinion[s] of [                  ][[168]](#footnote-169);   ***Environmental and social***   * 1. a copy of all environmental and social documents (e.g. impact assessment, management plan, annual monitoring report), all in a form approved by the Environmental and Social Adviser[[169]](#footnote-170);   ***Financial Model and budgets***   * 1. a copy of the Financial Model and the Base Case[[170]](#footnote-171);   2. a Financial Report showing compliance with [*insert relevant financial ratios:* *LLCR; projected* *DSCR for each* [ ] *month period*]*;*   3. a copy of the initial construction budget and the [(form of)] initial operating budget;[[171]](#footnote-172)   ***Financial statements***   * 1. financial statements relating to the Project Company[[172]](#footnote-173) [and Sponsors/Shareholders/Major Project Participants[[173]](#footnote-174)];   ***Hedging***   * 1. certified copies of any hedging agreements that have been entered into;   ***Title documentation***   * 1. copies of all documentation in relation to the Project site (e.g. ownership documents, site survey);   ***Process agent***   * 1. evidence of appointment of process agent[[174]](#footnote-175);   ***Project Accounts***   * 1. evidence that the Project Accounts have been opened and continue to be maintained with the Account Bank(s);   ***Equity contribution***   * 1. evidence that [Upfront Equity has been contributed in full]; [and]   ***Other***   * 1. evidence of payment of all fees, costs and expenses then due from the Project Company under the [Finance Documents], or that such fees, costs and expenses would be paid out of the proceeds of the first drawdown [of the Term Loan A Facility][[175]](#footnote-176); [and]   2. [a copy of any other document, authorisation, opinion or assurance specified by the Intercreditor Agent][[176]](#footnote-177). |
| * 1. Conditions Precedent to each drawdown: | These will include:   * 1. no Default is continuing or would result from the proposed Utilisation;   2. Repeating Representations[[177]](#footnote-178) are true and correct [in all material respects];   3. evidence that sufficient equity has been contributed so that the Debt to Equity Ratio will be at least [•] following the Utilisation;   4. all construction reports has been delivered by the Project Company in accordance with the requirements of the Finance Documents;   5. certification from the Project Company that:      1. use of proceeds is in accordance with the construction budget;      2. the Project Completion Date will be achieved on or before the Longstop Date; [[178]](#footnote-179) and      3. [costs to completion are not greater than the funds remaining available to the Project Company;]   6. [confirmation from the Technical Adviser:      1. that the relevant construction milestones have been achieved; and      2. of the matters referred to in paragraph (e) above;]   7. [no force majeure is continuing [that is reasonably likely to have a Material Adverse Effect]];   8. [*other*][[179]](#footnote-180); [and]   9. a Utilisation Request has been delivered in accordance with the requirements of the Finance Documents[[180]](#footnote-181). |
| * 1. Miscellaneous Provisions: | The Finance Documents will contain standard provisions for transactions of this nature based on the current recommended form of Singapore law multicurrency facility agreement of the APLMA and otherwise in form and substance satisfactory to the [Mandated Lead Arrangers[s][and Lenders]] relating to, among other things, default interest, market disruption, break costs, tax gross up and indemnities including FATCA[[181]](#footnote-182), increased costs,[[182]](#footnote-183) set-off, administration and changes in currency. |
| * 1. Tax Gross Up: | All payments to be made by the Project Company[[, Shareholders][and] Sponsors]] will be free and clear of all present and future taxes, unless required by law. If any deduction is required, the relevant party will pay an additional amount necessary to ensure that the relevant Finance Party receives an amount that would otherwise have been received had no such deduction been required. |
| * 1. Costs and Expenses: | All costs and expenses (including legal fees) reasonably incurred by the Intercreditor Agent and the Mandated Lead Arranger[s] in connection with the preparation, negotiation, printing, execution, implementation, translation, syndication, perfection and registration of the Finance Documents and any other document referred to in it shall be paid by the Project Company promptly on demand whether or not the Common Terms Agreement is signed. |
| * 1. Governing Law: | Singapore. |
| * 1. [Jurisdiction:][[183]](#footnote-184) | [Courts of Singapore]. |
| * 1. [Arbitration:][[184]](#footnote-185) | [Arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force.  The tribunal shall consist of [one/three][[185]](#footnote-186) arbitrator(s).  The seat of arbitration shall be Singapore.  The language of the arbitration shall be [English]][[186]](#footnote-187). |

1. Key Definitions
   * + 1. Capitalised terms used (but not otherwise defined) herein shall have the meaning given to them in the current form of Infrastructure Asia Common Terms Agreement.
       2. In this term sheet:[[187]](#footnote-188)
2. "**Available Cashflow**" means, in relation to any period, the sum (without duplication) of:
   1. Revenue for such period,[[188]](#footnote-189)

minus

* 1. the aggregate amounts of:
     1. Operating Costs and Project Costs, in each case to the extent not funded by way of the loans or equity, paid or payable during such period; and
     2. fees, expenses and hedging entry costs payable during such period; and
     3. any amount transferred or projected to be transferred to the Maintenance Reserve Account from the Operating Account in such period, to the extent such transfer is permitted in accordance with the Finance Documents,

in each case received or paid by the Borrower (as the case may be) during that period (or, in the case of Projected DSCR, projected in good faith to be received or paid by the Borrower (as the case may be) during that period) and provided that, for the purpose of determining Available Cashflow for any period, with respect to any amount received or projected to be received by the Project Company in a currency other than the currency of the Loans, only the amount in the currency of the Loans received or reasonably expected by the Borrower to be received following conversion in the currency of the Loans shall be taken into account, and otherwise such amount shall not be taken into account.

1. "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Singapore [and [*other*]] [[189]](#footnote-190).
2. "**Calculation Period**" means, in relation to any Calculation Date:
   1. [(for the purposes of calculating the Projected DSCR)] the period of [six/12] calendar months starting from (and including) that Calculation Date to (and including) the [immediately following[[190]](#footnote-191)] Calculation Date[; and
   2. (for the purposes of calculating the Historic DSCR) the period of [six/12] calendar months ending on (and including) that Calculation Date (or, in the case of the first Calculation Date falling after the Project Completion Date, the period from (and including) the Project Completion Date to (and including) that Calculation Date].
3. "**Debt Service**" means, in respect of any period, the aggregate (without double counting) of the financing costs, scheduled principal, and any principal, interest, fees, commissions, costs, expenses and any other payments in respect of other Financial Indebtedness under the Finance Documents and any Taxes paid or payable in respect thereof, in each case, accruing or falling due (or, in the case of a projection, forecast to accrue or to fall due) for payment during that period.
4. "**Discounted Cashflow for Debt Service**" means, in relation to any Calculation Date, the Available Cashflow projected in the current Base Case for such Calculation Period discounted back to such Calculation Date on the basis that: [[191]](#footnote-192)
   1. the discount rate to be applied shall be the weighted average (calculated by the Intercreditor Agent) by reference to the amount outstanding under [each] Facility) of the rates assumed in the current Base Case to be the rates at which interest will accrue under the [Facilities] from such Calculation Date until the Final Maturity Date[, taking into account any interest rate hedging applicable under the Hedging Agreements][[192]](#footnote-193); and
   2. the discounting shall be made on a [semi-annual/annual] basis and on the assumption that cashflow for a [semi-annual/annual] period occurs at the end of that [semi-annual/annual] period.
5. "**Material Adverse Effect**"means a material adverse effect on:
   1. the present or future business, operations, assets, property or condition (financial or otherwise) of the Project Company [or the [Shareholder][Sponsor]];
   2. the ability of any Major Project Participant to perform its [payment and other material] obligations under:
      1. any of the Finance Documents; or
      2. any of the Project Documents [other than any Project Documents that have been discharged or replaced]; or
   3. (subject to the legal reservations and the applicable perfection requirements which are not overdue) the validity or enforceability of, or the effectiveness or ranking of any Transaction Security granted or purported to be granted pursuant to any of, the Transaction Documents or the rights or remedies of any Finance Party under the Transaction Documents [other than, in each case, any Project Documents that have been discharged or replaced].

1. "**Revenue**" means, in relation to any period, all amounts received (or, in the case of a projection, projected to be received) by the Project Company during such period (without double counting), comprising:
   1. revenues received from or in connection with [*insert principal source of revenue(s) for the Project*];
   2. delay liquidated damages received;
   3. insurance proceeds received under loss of revenue insurance;
   4. interest paid on the Accounts;
   5. refunds of Tax of any kind;
   6. (if a positive amount) net scheduled amounts paid (or, in the case of a projection, projected to be paid) to the Project Company pursuant to the hedging agreements (other than costs of terminating a hedging agreement); and
   7. other amounts which the Intercreditor Agent agrees shall be Revenue,

but Revenue shall not include the proceeds of any financial indebtedness, equity or pursuant to any guarantee or other insurance in respect of the foregoing or any compensation.

1. Breakdown of Project Costs
2. **Breakdown:**
   1. Historic costs/Development costs[[193]](#footnote-194): [•]
   2. Capital expenditure/Construction costs: [•]
   3. Contingency[[194]](#footnote-195): [•]
   4. Financing costs[[195]](#footnote-196) (i.e. fees and costs/expenses of advisers and Finance Parties, costs of entry into hedging agreements): [•]
   5. Interest during construction: [•]
   6. Other costs (e.g. insurance premia): [•]
   7. [Initial funding of [Debt Service Reserve Account]/[Maintenance Reserve Account]: [•]][[196]](#footnote-197)
   8. Working capital (construction period): [•]
3. Shareholding Structure[[197]](#footnote-198)

[•]%

[•]%

[*Insert name*]

("**Sponsors**")

[*Insert name*]

("**Sponsors**")

100%

[*Project Company*]

(the "**Project Company**")

[*Insert name*]

("**Shareholder**")

1. This should include any person providing equity or sponsor support (including cash deficiency support or completion guarantees) for the Project. [↑](#footnote-ref-2)
2. To be included if the Sponsors do not directly own the Borrower. [↑](#footnote-ref-3)
3. All key project contract counterparties to be included here. Additional/alternative counterparties may include the grantor of any concession (or counterparty to any Build-Operate-Transfer or implementation agreement), fuel/feedstock supplier(s), utilities providers, long-term services providers, land lessor(s) and any guarantors of any such counterparties. [↑](#footnote-ref-4)
4. The Major Project Participant concept, if it is used, will typically apply to: (1) conditions precedent (to provide constitutional documents, financial statements); (2) undertakings (financial statements); (3) Events of Default (insolvency, cross default); and (4) definition of Material Adverse Effect. [↑](#footnote-ref-5)
5. Terminology to be amended depending on the form of the Construction Contract. [↑](#footnote-ref-6)
6. Counterparties should only be classified as Major Project Participants for so long as they have material obligations under the Project Documents. Shareholders may require that they are also only Major Project Participants for so long as they have obligations under the relevant equity support documents. [↑](#footnote-ref-7)
7. Parties to agree on the scope of Major Project Participant. [↑](#footnote-ref-8)
8. Where there are a number of Facilities, there is generally one overall agent coordinating the facilities and an individual Facility Agent for each separate facility. This template refers to the overall agent as the Intercreditor Agent. [↑](#footnote-ref-9)
9. As per the above, if there are multiple facilities, insert the identity of each Facility Agent. [↑](#footnote-ref-10)
10. Often both an onshore security agent (in respect of local law security) and offshore security agent (in respect of non-local law or offshore security) are required. [↑](#footnote-ref-11)
11. Local law advice should be sought to ascertain the appropriate structure for holding the security (as a trust is not recognised in all jurisdictions). [↑](#footnote-ref-12)
12. The Account Bank(s) should be listed here and may be party to the Common Terms Agreement– as generally the Account Bank will also be a Lender and so will not object to being a party – but, in some cases, it may not be. The reason for this is that the Account Bank is not an agent for the Finance Parties and is performing an administrative function in the course of which it complies strictly with instructions, relies only on notice that relevant conditions are satisfied without being required to make its own investigations and is not required to exercise any discretions. [↑](#footnote-ref-13)
13. An onshore/offshore account bank split has been assumed on the basis of there being both onshore and offshore accounts. Again however, this is subject to what is permissible in the relevant Project jurisdiction, as some jurisdictions may limit the ability of the Project Company to maintain offshore accounts in the absence of special permissions, which may or may not be readily obtainable. [↑](#footnote-ref-14)
14. This is the bank (or banks) that issues any letters of credit (L/C) that are issued under L/C or working capital facilities that form part of the senior financing. This should not include L/C issuers of L/Cs or other credit support that is issued for the account of the Sponsors, even where issued on behalf of the Project Company. Also known as a Fronting Bank or a L/C Fronting Bank. [↑](#footnote-ref-15)
15. If there is a large Lender group, various role banks may be appointed to coordinate different due diligence or financing workstreams, depending on the needs of the transaction. [↑](#footnote-ref-16)
16. A Documentation Bank may be appointed to negotiate the Finance Documents on behalf of the Lenders or a subset of the Lenders. [↑](#footnote-ref-17)
17. The Technical Bank's role is to act as the Lenders' coordinator with regard to consultations involving the Project Company and the Technical Adviser. [↑](#footnote-ref-18)
18. The Environmental Bank's role is to act as the Lenders' coordinator with regard to consultations involving the Project Company and the Environmental and Social Adviser. [↑](#footnote-ref-19)
19. The Insurance Bank's role is to act as the Lenders' coordinator with regard to consultations involving the Project Company and the Insurance Adviser. [↑](#footnote-ref-20)
20. A Hedging Coordination Bank would typically be responsible for liaising with the Project Company to finalise the hedging strategy and reach an agreement on the process for undertaking the required hedging arrangements. On some projects, it may be agreed that one or two banks (known as Hedging Arrangers) will enter into the hedging initially, with subsequent novations to other Hedging Banks. [↑](#footnote-ref-21)
21. The Modelling Bank's role is to act as the Lenders' coordinator with regard to consultations involving the Project Company and the Model Auditor. [↑](#footnote-ref-22)
22. All advisers appointed by the Lenders to be listed here. This is a suggested list, but there will be variations depending on the project. [↑](#footnote-ref-23)
23. Depending on the project, other advisers may be appointed in areas such as: (1) market (e.g. where the revenues generated by the Project are dependent on a market); (2) fuel or raw material (e.g. where inputs to the Project are not provided under a long-term contract); (3) traffic (e.g. for projects where revenues are dependent on traffic flows); (4) natural resources (e.g. on a mining or upstream oil and gas project, a reserve report and feasibility report may be required; on a wind power project, advice on energy yield may be required). [↑](#footnote-ref-24)
24. Include the types of facilities that would be required for the Project. [↑](#footnote-ref-25)
25. On many projects, working capital will not be required until the operating period (or at least, the working capital requirements will be minimal prior to the operational period). Consequently, borrowers may prefer not to enter into a working capital facility until the operational period commences. The working capital requirements in any event will be determined by the Financial Model and appropriate arrangements for the specific project must be agreed between the parties. [↑](#footnote-ref-26)
26. This would provide contingency funding to cover unforeseen cost overruns during the construction period. [↑](#footnote-ref-27)
27. This is a loan advanced against the credit of the Sponsors (so they do not have to inject equity until a later date – see footnote 32) and could be structured as a loan to the Project Company or the Sponsors. The option in this template assumes that the Equity Bridge Facility is structured as a loan to the Project Company which is then guaranteed (on a several basis) by each of the Sponsors. Whether financing costs in respect of the Equity Bridge Facility would be included within "Project Costs" is subject to negotiation although it is fairly common and subject in some cases to a limit determined on the basis of the Financial Model. [↑](#footnote-ref-28)
28. Where export credit agencies (ECAs) are involved in the financing for a project (whether through the provision of direct funding or cover under an insurance policy or guarantee), generally there will be a separate facility agreement for each ECA which will contain the disbursement mechanics specific to that ECA, while the general financing terms that are common to the ECA facility/ies and any other Lender groups will be set out in a Common Terms Agreement. Generally, ECAs which are providing cover (rather than direct funding) will not be party to the Finance Documents (other than their insurance policies or guarantees). [↑](#footnote-ref-29)
29. Development finance institutions (DFIs) are often involved in the financing for a project (whether through the provision of direct funding or cover under an insurance policy or guarantee) undertaken by the private sector in order to support economic development in developing markets. DFIs may also offer alternative forms of support depending on the nature and needs of the project, such as equity investment or quasi-equity products (e.g. mezzanine financing). [↑](#footnote-ref-30)
30. On some projects a VAT/GST facility is provided in order to 'bridge' payments of VAT/GST which the Project Company can subsequently reclaim. Depending on the VAT/GST refund regime in the relevant jurisdiction, this may be structured either as a revolving facility or as a term facility. In either case it would be repaid out of VAT/GST refunds received by the Project Company (and have priority over such refunds as against other senior lenders). [↑](#footnote-ref-31)
31. Examples of other facilities that may be provided include:

    1. L/C Facility – there may be a need for a separate facility to issue letters of credit where these are required as part of the Project.
    2. Mezzanine Facility – a project may involve mezzanine funding if there is a funding gap (i.e. a shortfall in available senior debt funding and the amount of equity that can be raised). Mezzanine Lenders will be subordinated to senior Lenders.
    3. Islamic Facility – on some projects, there may be Islamic financing alongside international bank financing and typically this will involve drafting separate commercial bank and Islamic facility documents (with an umbrella Common Terms Agreement and a Security Trust and Intercreditor Deed).

    [↑](#footnote-ref-32)
32. Details of the Sponsors/Shareholders' contribution by way of equity to be included here. The equity contribution obligations will generally be contained in a separate agreement (e.g. Shareholder Contribution and Sponsor Support Agreement, Equity Contribution Agreement, Equity Support and Retention Agreement). This agreement would also contain provisions covering any other support and undertakings provided by Sponsors and/or Shareholders in relation to the Project, including share retention, subordination and other general undertakings. For the purpose of this term sheet such agreement is referred to as the Shareholder Contribution and Sponsor Support Agreement but consider updating this term for your transaction as necessary. Any Equity Bridge Facility to the Project Company will be subordinated to the other Facilities and needs to be replaced by Base Equity within an agreed time period.

    Some example wording has been provided, but in each case the following should be considered:

    1. will all equity be funded "upfront", or will it be contributed pro rata with Utilisations of the Loans, or back-ended (and if so, will it be backed by credit support, and can Lenders 'accelerate' equity payments following an Event of Default: see footnote 33 below) or in accordance with an equity contribution instalment schedule;
    2. where equity is to be back-ended (i.e. contributed at the end of the construction period), will an equity bridge structure be used (and if so, when and how will the equity bridge loan be repaid);
    3. will a portion of equity be on a standby basis (and if so, will it be backed by credit support); and
    4. can sponsors contribute equity in the form of subordinated debt (shareholder loans) as well as true share capital (if so, the arrangements will need to comply with thin capitalisation rules in the relevant jurisdiction)?

    [↑](#footnote-ref-33)
33. Any ability of the Finance Parties to 'accelerate' uncontributed equity while an Event of Default is continuing will be subject to negotiation on a project-by-project basis and may be made subject to further conditions such as limitation of the acceleration triggers to "major" Events of Default such as non-payment, insolvency etc. or only once an acceleration of the Loans upon the occurrence of an Event of Default has commenced. [↑](#footnote-ref-34)
34. Whether Standby Equity is required, and the conditions under which it will be contributed, will be subject to negotiation on a project-by-project basis. If a Standby Facility is included, then Standby Equity should be contributed pro rata with the Standby Facility. [↑](#footnote-ref-35)
35. The rating requirement will need to refer to the relevant rating agency/ies which set the ratings (which will usually be one or more of Moody's, Standard & Poor's or Fitch). [↑](#footnote-ref-36)
36. In classic 'non-recourse' project financing, sponsors have no further financial obligations beyond contribution of equity. However, some form of additional financial obligation (i.e. sponsor support) may be offered on specific projects and/or for specific risks. In these circumstances, the sponsor support will generally be contained in the Shareholder Contribution and Sponsor Support Agreement (in addition to other customary obligations, such as equity contribution, share retention and subordination undertakings), but a summary of the principal support to be provided is typically included in the term sheet as this is a key consideration for Lenders.

    Two common types of sponsor support are:

    1. completion support (or "completion guarantee") – these terms may be used to describe a wide spectrum of support for the achievement of completion of the project, ranging from an undertaking to provide a limited amount of standby equity in order to fund cost overruns or meet other funding shortfalls to a full guarantee of repayment of debt if completion is not achieved by a certain date; and
    2. specific post-completion support – this may be required where Lenders are unwilling or unable to take certain specific post-completion risks and will need to be assessed on a project-by-project basis (e.g. where there is a concern over demand risk, Sponsors may give a standby offtake undertaking).

    [↑](#footnote-ref-37)
37. There may be additional revenue sources (e.g. a government grant and pre-completion revenues) which may be included in the Debt to Equity Ratio calculation. [↑](#footnote-ref-38)
38. Parties to amend as necessary. [↑](#footnote-ref-39)
39. This definition is generally used to describe the commencement of the operation of the project level. In certain transactions (e.g. ECA backed) it may affect the availability period and the first repayment date. [↑](#footnote-ref-40)
40. This term sheet assumes that there will be one Project Completion Date. Some transactions also include a Financial Completion Date where additional requirements are included prior to the release of sponsor support or the permitted payment of restricted payments (such as distributions or repayment of shareholder loans). For some deals, there may not be a separate Financial Completion Test concept, e.g. for some Public-Private Partnership financings, completion is commonly pegged to completion under the offtake agreement alone, which entails acceptance by the authority/Offtaker(s). [↑](#footnote-ref-41)
41. This Projected DSCR test may not be included in projects where any market risk is being taken (e.g. traffic risk on a road project or pricing risk for a resource project). In such scenarios alternative operational reliability tests may be required. [↑](#footnote-ref-42)
42. For further information about reserve accounts, see the *Project Accounts* section below, including footnotes.  Note that if the DSRA is to be funded from cashflow, then there may be no requirement for the account to be funded on or prior to the Financial Completion Date.  In such circumstances, Lenders may be comfortable that a fully funded DSRA is simply a distribution test (i.e. the Project Company can only make distributions to the Sponsors/Shareholders if the DSRA is fully funded). [↑](#footnote-ref-43)
43. What the appropriate longstop date will be on a specific project is likely to be the subject of negotiation and consideration will need to be given to various factors, including the contractual framework and the Financial Model. [↑](#footnote-ref-44)
44. Such a true-up may be appropriate to allow the Sponsors to take some or all of the benefit of any cost saving during construction, particularly in circumstances where base equity has been funded upfront (including through an equity bridge facility). Sponsors will have a disproportionate share of the cost saving if the equity true-up allows a higher debt to equity ratio than in the base case, while if the same debt to equity ratio is used, the cost savings will be shared proportionately between Sponsors and Lenders. [↑](#footnote-ref-45)
45. Amend as necessary. This will typically include the Term Loan A Facility but some Facilities may be used for specific purposes only and therefore will not be drawn for equity true-up (e.g. the Standby Facility which will be used to fund Project Cost overruns). [↑](#footnote-ref-46)
46. Note that there may be a number of term facilities which will cover, together with equity, Project Costs, for example, one or more ECA facilities together with a multilateral or development finance institution facility, a commercial bank facility, an Islamic facility, etc. See footnote 31 above. [↑](#footnote-ref-47)
47. Parties to consider if a zero floor for the applicable benchmark should be included. [↑](#footnote-ref-48)
48. Confirm the day count convention according to the relevant currency of the facility. 360 days is the appropriate day count convention for USD loans. 365 days is the appropriate day count convention for SGD loans. [↑](#footnote-ref-49)
49. During the construction period, the accrued interest (or IDC – interest during construction) is generally funded as a "use" or as Project Cost during construction, and through a mix of debt and equity, and is normally either:

    'capitalised' – i.e. added to the principal amount outstanding under the relevant Facility on the relevant interest payment date; or

    paid by making a drawing on the loan on the relevant interest payment date. [↑](#footnote-ref-50)
50. Interest payment dates are often fixed to fall on regular days in each calendar year, during construction as well as operations (despite the fact that interest is often capitalised during the construction period), rather than permitting the Borrower to freely select interest period tenors. [↑](#footnote-ref-51)
51. The availability period for the facilities will be specific to each transaction, depending on the timing for payment of Project Costs under the Project Documents. [↑](#footnote-ref-52)
52. A limit on the number of loans that may be outstanding is typically included for administrative purposes (so that the relevant Facility Agents are not overly burdened). This would need to be considered alongside the timing for payment of Project Costs under the Project Documents. [↑](#footnote-ref-53)
53. The Project Company will be permitted to pay Project Costs as long as these are in line with the relevant budgets (subject to permitted variances). Finance Parties will want to have approval rights if costs are in excess of budget. Some payments may also be subject to approval by the Technical Adviser. [↑](#footnote-ref-54)
54. Some specific term facilities (e.g. tied ECA facilities or some Islamic facilities) may only be available to fund certain categories of 'eligible' Project Costs. This should be detailed in the term sheet. [↑](#footnote-ref-55)
55. In this context, financing costs refers to: (1) fees and expenses of advisers, (2) fees, costs and expenses payable to the Finance Parties, (3) costs of entry into hedging agreements, and (4) interest during construction (taking into account scheduled hedging payments) (unless such interest is to be capitalised and added to the principal amount of the Loans). [↑](#footnote-ref-56)
56. Where equity is initially funded through an Equity Bridge Facility, consideration will need to be given to whether (and to what extent) financing costs in respect of the Equity Bridge Facility can be funded as a Project Cost. [↑](#footnote-ref-57)
57. Assuming these are funded out of the debt and equity. Some ECAs are sensitive to loan proceeds being used to fund the initial balance of the DSRA. Adapt as appropriate. [↑](#footnote-ref-58)
58. Definition to be adjusted depending on the specifics of the Project. [↑](#footnote-ref-59)
59. Insert as appropriate depending on whether a revolving facility is being provided or a letter of credit facility. [↑](#footnote-ref-60)
60. Parties to consider if a zero floor for the applicable benchmark should be included. [↑](#footnote-ref-61)
61. To include if there is a letter of credit facility. [↑](#footnote-ref-62)
62. The Working Capital Facility may not be required until the Commercial Operation Date or just before the Commercial Operation Date. [↑](#footnote-ref-63)
63. A limit on the number of loans that may be outstanding is typically included for administrative purposes (so that the relevant Facility Agents are not overly burdened). This would need to be considered alongside the timing for payment of Project Costs under the Project Documents. [↑](#footnote-ref-64)
64. Parties to consider if a zero floor for the applicable benchmark should be included. [↑](#footnote-ref-65)
65. The Availability Period end date should be fixed so as to allow Project Cost overruns to be funded when due. [↑](#footnote-ref-66)
66. Parties to consider if a zero floor for the applicable benchmark should be included. [↑](#footnote-ref-67)
67. A limit on the number of loans that may be outstanding is typically included for administrative purposes (so that the relevant Facility Agents are not overly burdened). This would need to be considered alongside the timing for payment of Project Costs under the Project Documents. [↑](#footnote-ref-68)
68. This should be adapted to reflect any requirements of the relevant ECA. [↑](#footnote-ref-69)
69. Parties to consider if a zero floor for the applicable benchmark should be included. [↑](#footnote-ref-70)
70. A limit on the number of loans that may be outstanding is typically included for administrative purposes (so that the relevant Facility Agents are not overly burdened). This would need to be considered alongside the timing for payment of Project Costs under the Project Documents. [↑](#footnote-ref-71)
71. Different ECAs have different policy requirements. These should be set out in detail in the term sheet. [↑](#footnote-ref-72)
72. This should be adapted to reflect any requirements of the relevant DFI. [↑](#footnote-ref-73)
73. Parties to consider if a zero floor for the applicable benchmark should be included. [↑](#footnote-ref-74)
74. A limit on the number of loans that may be outstanding is typically included for administrative purposes (so that the relevant Facility Agents are not overly burdened). This would need to be considered alongside the timing for payment of Project Costs under the Project Documents. [↑](#footnote-ref-75)
75. Parties to consider if a zero floor for the applicable benchmark should be included. [↑](#footnote-ref-76)
76. Project finance facilities in Southeast Asia are typically long-term facilities which are repaid in instalments (amortising) rather than in one lump sum (bullet). However the repayment clause may be structured differently (e.g. as a bullet repayment at maturity) if, for example, a mini-perm structure is used. If there is any Facility supported by an Export Credit Agency, there may also be specific requirements relating to the repayment profile that apply. [↑](#footnote-ref-77)
77. To include if hedging will be required. The specifics of the hedging programme would depend on the transaction, including what is permissible in the jurisdiction of the Project. Key points to consider in relation to any hedging strategy include, among others:

    1. what will be hedged (e.g. interest rate, exchange rate, input price (e.g. fuel), output price (e.g. metal ore));
    2. at what point will the hedging be entered into (e.g. at financial close, in stages following financial close);
    3. what will the profile (term) of the hedging be;
    4. what proportion of the debt (or other underlying) must be hedged;
    5. who will the hedging counterparties be (e.g. only MLAs or Lenders, or will MLAs/Lenders have a 'right to match'; must they have a specified rating; must they exit the hedges if they exit the debt);
    6. what security and voting rights will the hedging counterparties have; and
    7. form of hedging documentation.

    [↑](#footnote-ref-78)
78. If this condition is included, a Cost to Complete test to any prepayment is not required. [↑](#footnote-ref-79)
79. The mandatory prepayment events may differ from project to project. [↑](#footnote-ref-80)
80. Some deals may, depending on the sector to which the Project relates, also include a cash sweep. A cash sweep is a form of mandatory prepayment, which requires a proportion (which could be 100%) of surplus cash flow from the project to be applied towards repayment of debt (when otherwise it would have been used to provide sponsors with a return on their capital). [↑](#footnote-ref-81)
81. This provides that the proportion of insurance proceeds that is required to be applied towards mandatory prepayment is the portion required to restore the level of ratios to an agreed threshold / the base case ratios. Some lenders may require 100% of the insurance proceeds to be applied toward mandatory prepayment. Amend as necessary. [↑](#footnote-ref-82)
82. There may be various contracts under which liquidated damages are payable – for instance, the construction contract, the concession agreement and the offtake agreement – an alternative approach is to list all such contracts here. [↑](#footnote-ref-83)
83. See footnote 150 below. [↑](#footnote-ref-84)
84. Update this to include the Facilities that will be prepaid upon the occurrence of the events set out above. Generally, the Equity Bridge Facility and the VAT/GST Facility will not be prepaid (unless, in the case of the VAT/GST Facility, it is a scenario in which the project financing is no longer viable). Certain events may only lead to the prepayment of a single facility (e.g. loss of ECA cover under an ECA Facility would lead to a prepayment of that ECA Facility). [↑](#footnote-ref-85)
85. The Hedging Strategy will typically require a certain proportion (typically expressed as a range) of the debt to be hedged. If the amount of debt is reduced, the project may as a result be "over hedged". [↑](#footnote-ref-86)
86. Where voluntary cancellation is permitted, consider whether cancellation must be *pro rata* across facilities or otherwise. [↑](#footnote-ref-87)
87. Amend as appropriate. [↑](#footnote-ref-88)
88. See footnote 81 above. [↑](#footnote-ref-89)
89. Due to the differences between how different projects' revenue is structured along with the regulations applicable to accounts in each jurisdiction, account bank provisions are typically included in separate accounts agreements – particularly where there is an onshore and offshore account bank split as has been assumed here. See footnote 95 below for a suggested accounts structure. [↑](#footnote-ref-90)
90. The Project Company may benefit from assurances (rather than direct agreements) from relevant authorities in relation to consents/authorisations and these would typically be mentioned here too. [↑](#footnote-ref-91)
91. The form and nature of the agreement required would depend on whether there are any obligations imposed on the Sponsors/Shareholders in addition to the injection of equity, such as a completion guarantee. [↑](#footnote-ref-92)
92. The list of security set out in this term sheet covers what a typical Lenders' security package would include. However, the details of the security package on any specific project will be bespoke and dependent on the local jurisdiction and the entity. [↑](#footnote-ref-93)
93. See the *Project Accounts* section below – the suggested account structure in this term sheet includes a Distributions Account into which amounts from the cash waterfall are paid if distribution tests are met. Where this structure is used, the Distributions Account is often unsecured. [↑](#footnote-ref-94)
94. Include any other Security Documents appropriate for the transaction, as recommended by local counsel, such as any security powers of attorney. [↑](#footnote-ref-95)
95. This is a simple accounts structure. This structure establishes one main account for the construction period (the Disbursement Account) and one main account for the operating period (the Operating Account). If appropriate, it may be necessary or desirable to establish 'mirrored' onshore and offshore accounts (e.g. both an offshore and an onshore operating account) for currency and/or risk purposes, and the Accounts Agreement would contain clauses requiring or permitting the transfer and conversion of monies between onshore and offshore accounts. This also allows cash to be retained in the currency of the Loans, mitigating foreign exchange and repatriation risk. It may also be desirable to establish separate accounts for other defined revenue sources or purposes. Lenders may also want to see accruals on a monthly basis in respect of debt service or operating expenses, in which case a separate debt service payment/accrual account or operating expense account will be required in each Loan currency. [↑](#footnote-ref-96)
96. See footnote 95 above. [↑](#footnote-ref-97)
97. This is the principal 'construction period' account. In order that the transition from the construction period account to the operating period account works properly, it will be necessary to understand the timing and make-up of construction period revenues and the timing for payment of construction period costs and operating period costs. Note that disbursement accounts do not always automatically close upon the completion of construction as there may still be construction period costs to be paid after this point. [↑](#footnote-ref-98)
98. The make-up and quantum of any project revenues during the construction period will vary from project to project. If there are projected to be significant revenues during construction (and particularly if these are a 'source' in the financing plan), it may make sense to open a separate account to keep track of these amounts (and to facilitate any associated prepayments that may be required). [↑](#footnote-ref-99)
99. Parties to consider whether separate revenue account and operating account are required. [↑](#footnote-ref-100)
100. As well as the revenues received directly from operation of the Project, this should include any insurance proceeds from loss of revenue insurances (e.g. business interruption insurance). [↑](#footnote-ref-101)
101. Loss of revenue insurance proceeds are paid into the Disbursement Account/Operating Account as such amounts represent the revenue that the Project Company would have received but for the occurrence of the insured event (i.e. this insurance is simply designed to 'keep the insured whole'). Proceeds of third-party insurance are generally paid by insurers directly to the third party. In the event that the Project Company pays the third party and the insurer then compensates the Project Company, such proceeds would be paid into the Disbursement Account/Operating Account (as, again, these amounts are just 'keeping the insured whole'). [↑](#footnote-ref-102)
102. The purpose of a Maintenance Reserve Account is to set aside amounts that will be required for scheduled major maintenance of the Plant. Whether such an account is required, and if so what the mechanism for determining the required balance should be, will be heavily dependent on the type of project and how evenly/unevenly maintenance costs are spread over the lifecycle. [↑](#footnote-ref-103)
103. This will be dependent on the expected maintenance costs for the Project. The Technical Adviser's input would also be required here. [↑](#footnote-ref-104)
104. In this account structure, amounts will be paid into the Distributions Account from the cash flow waterfall if the Distribution Tests are met. Once in the Distributions Account, the Project Company may make dividends, distributions, or repayment of shareholder loans without restrictions. If the Distribution Tests are not met, then the money will remain in the Operating Account and be available for application in accordance with the cash flow waterfall until the subsequent repayment (or calculation) date. [↑](#footnote-ref-105)
105. The waterfall is intended by the Lenders to control how cash flow is applied and accordingly sets out an order of priority for payments. This template sets out a basic waterfall, but this would need to be tailored for the operational realities of each project, in particular the revenue structure and manner in which operating costs are paid. [↑](#footnote-ref-106)
106. The Project Company will be permitted to pay operating costs as long as these are in line with the relevant operating budgets (subject to permitted variances). Finance Parties will typically require approval rights if costs are in excess of budget. "Operating Costs" typically include:

     1. costs arising under relevant Project Documents (e.g. O&M Agreement);
     2. necessary capital expenditure;
     3. insurance costs;
     4. regular maintenance costs;
     5. administrative costs;
     6. costs of renewing consents; and
     7. tax.

     [↑](#footnote-ref-107)
107. Any other mandatory prepayments (other than a cash sweep, which typically ranks lower, just before distributions) can be included at this rung of the cash flow waterfall. [↑](#footnote-ref-108)
108. A cash sweep would also potentially rank ahead of non- pro-rated mandatory prepayments depending on the event or circumstance giving rise to such cash sweep. [↑](#footnote-ref-109)
109. Include if DSRA/MRA funding obligations can be satisfied through the provision of a letter of credit instead of holding cash balances. Strong borrowers/Sponsors may also request the option of funding the DSRA through a Sponsor guarantee in which case a minimum credit rating in respect of the Sponsor may be required for such Sponsor guarantee to be accepted by lenders. If that is acceptable, revise this paragraph to reflect accordingly. [↑](#footnote-ref-110)
110. Lenders may, depending on the nature of the project, also require a projected DSCR test particularly where there is any potential volatility in future revenues. [↑](#footnote-ref-111)
111. This LLCR test is useful/relevant where there is some cyclicality or particular volatility in the cost or revenue side of the project and financiers would like to test this to give some comfort in addition to the level of minimum DSCR. [↑](#footnote-ref-112)
112. Delivery of the agreed and audited Financial Model and Base Case will be a condition precedent to financial close, but in practice the Lenders will require it to be agreed before signing the Finance Documents. [↑](#footnote-ref-113)
113. The treatment of the Base Case and the manner in which assumptions may be updated will depend on the sector of the Project. Parties to amend accordingly on a transaction by transaction basis. [↑](#footnote-ref-114)
114. The protocol for updating assumptions in the Base Case needs to be considered in relation to each project. It will only be necessary to update assumptions where projected ratios are used. The circumstances in which assumptions are updated will depend on the inputs to the Base Case (e.g. expected costs, revenues) and whether these are variable (e.g. based on market prices, indexed to inflation). [↑](#footnote-ref-115)
115. The Financial Reports are extracts (or outputs) from the Financial Model which show the financial ratios for the relevant period and the information supporting the ratio calculations. [↑](#footnote-ref-116)
116. This will often coincide with the repayment dates. Typically, ratios are tested: (1) at signing or financial close (i.e. a condition precedent); (2) at the Project Completion Date or Financial Completion Date; and (3) on repayment dates. [↑](#footnote-ref-117)
117. For example, if required to determine whether to apply physical loss or damage insurance proceeds in mandatory prepayment or in reinstatement and repair. [↑](#footnote-ref-118)
118. The most common uses of ratios are as follows:

     1. financial/project completion test (will the project as built produce cashflows to meet original expectations?);
     2. distribution test (if not met, cash can be locked up or used to prepay debt);
     3. Event of Default.

     Other examples of where ratios may be used are: (i) incurring additional debt (there may be a prohibition on incurring additional debt unless, taking into account the additional debt servicing burden, specified ratios can be met) and also on repayment (to either determine the repayment amount or trigger a cash sweep); (ii) partial refinancing (if such refinancing is permitted at all, it may be subject to specified ratio tests being satisfied); (iii) reinstatement following an insurance claim (Lenders may require ratio tests following an insurance claim to demonstrate that insurance proceeds should be applied in reinstatement as opposed to mandatory prepayment); and (iv) in conjunction with mandatory prepayments. [↑](#footnote-ref-119)
119. Whether or not the transaction also includes a projected (forward-looking) DSCR test in addition to the historic DSCR test reproduced here will be specific to the deal and the market. [↑](#footnote-ref-120)
120. Parties to consider whether revolving facilities should be included or excluded from the Projected DSCR. [↑](#footnote-ref-121)
121. To include if a Projected DSCR test is also required. [↑](#footnote-ref-122)
122. The discount rate to be used in this calculation needs to be agreed between the parties. Typically, it is aligned with the hedged interest rate under the Facilities. [↑](#footnote-ref-123)
123. To include if an LLCR test is required (usually for debt sizing purposes and as a Financial Completion Date condition). [↑](#footnote-ref-124)
124. It will be a subject for negotiation whether the Equity Cure amounts are treated as (a) additional revenue or (b) a reduction in debt – these will have different mathematical impacts on the ratio(s). The application of Equity Cure towards a reduction of debt is far less common. If the Equity Cure is applied to reduce debt, an additional mandatory prepayment event may be included in the term sheet providing for the application of the Equity Cure to prepay the Loans (typically on a pro rata basis). Stronger sponsors may negotiate for the Equity Cure sum to be subject to security in favour of the banks but not actually applied towards prepayment, with an option for the release of the Equity Cure once the relevant ratio is remedied in the subsequent quarter(s). [↑](#footnote-ref-125)
125. The list of representations that will be repeated is negotiated on a project by project basis. This may not happen at term sheet stage. [↑](#footnote-ref-126)
126. Other representations may be relevant to the Project Company (and the Sponsors, as the case may be) on a transaction by transaction basis, e.g. environmental compliance and environmental claims. [↑](#footnote-ref-127)
127. Consider if this list should be exhaustive or if it should be expressed to be without limitation. Consider representations, as appropriate, to reflect sanctions laws and regulations that may affect Lenders depending on their jurisdiction of incorporation or business, for example US and EU sanctions (which may prohibit Lenders from advancing funds to be made available to targets of any relevant sanctions authority, as well as other restrictions).

     Lenders may also wish to consider amendments, as appropriate, to reflect laws and regulations on anti-money laundering, anti-bribery and anti-corruption that may affect them (as above, depending on their jurisdiction of incorporation or business). [↑](#footnote-ref-128)
128. Banks may wish to make specific reference here to compliance with Equator Principles (and/or other applicable environmental standards). [↑](#footnote-ref-129)
129. Depending on the stage at which the Project is at it may not have title to all assets yet given that construction may not have commenced yet. [↑](#footnote-ref-130)
130. These representations (*No immunity* and *Private and commercial acts*) may be deleted if it is clear that the Project Company is not entitled to sovereign immunity. [↑](#footnote-ref-131)
131. Parties may consider defining the "force majeure" concept at term sheet stage if preferred. [↑](#footnote-ref-132)
132. The project participants in respect of which financial statements will be requested depends on their roles in the project, particularly if they are also providing support such as a completion guarantee. Accordingly, the requirement to provide financial statements typically includes the Project Company and the Shareholders/Sponsors. [↑](#footnote-ref-133)
133. To be considered on a project by project basis – the provision of yearly and half-yearly financial statements should in most circumstances be sufficient. [↑](#footnote-ref-134)
134. The frequency and content of reports to Lenders during the construction period will depend on the individual project. The form of the construction reports may also be agreed upfront as a condition precedent, or prior to delivery of the first construction report. In any event, the scope of the construction reports should be agreed beforehand. [↑](#footnote-ref-135)
135. If not already contained in the construction or operating reports. [↑](#footnote-ref-136)
136. The Project Company will only be permitted to pay Project Costs or Operating Costs that have been budgeted (and are in accordance with the Financial Model). Consequently, it will be necessary for the parties to agree how often budgets will be produced by the Project Company (e.g. annually, semi-annually, quarterly) and the process for approval by Lenders. The process should incorporate some flexibility allowing the Project to go over budget (as a contingency will have been agreed for this purpose) and this may involve a cap (e.g. costs can go over budget as long as they do not exceed 110% of initial budget) which may apply to all costs or to specified line items, or alternatively an assessment of whether the overspend is fully funded. A process for agreeing budgets and updating budgets within a period will need to be agreed. [↑](#footnote-ref-137)
137. This may be particularly relevant where export-credit agencies are involved. [↑](#footnote-ref-138)
138. See footnote 152 below. [↑](#footnote-ref-139)
139. Obligations specific to the Shareholders/Sponsors may be contained in the Common Terms Agreement or in the Shareholder Contribution and Sponsor Support Agreement. Typically, the obligations imposed on the Shareholders/Sponsors involve the general obligations relating to status and compliance with laws, preservation of any security they have granted, and undertaking to maintain their direct or indirect shareholding in the Project Company. [↑](#footnote-ref-140)
140. Consider if this list should be exhaustive or if it should be expressed to be without limitation. It is noted that additional undertakings and events of default may need to be added as the due diligence phase progresses and so it may be difficult to define the full scope of the same at the term sheet stage. [↑](#footnote-ref-141)
141. Consider undertakings, as appropriate, to reflect sanctions laws and regulations that may affect Lenders depending on their jurisdiction of incorporation or business, for example US and EU sanctions (which may prohibit Lenders from advancing funds to be made available to targets of any relevant sanctions authority, as well as other restrictions). In addition, Lenders in some jurisdictions should take advice in relation to possible conflict of laws that may impact on their ability to include undertakings of this nature. For further information see APLMA Note on General Guidance on Sanctions (available through the APLMA website).

     Lenders may also wish to consider amendments, as appropriate, to reflect laws and regulations on anti-money laundering, anti-bribery and anti-corruption that may affect them (as above, depending on their jurisdiction of incorporation or business). [↑](#footnote-ref-142)
142. Lenders may wish to make express reference to compliance with the Equator Principles here. [↑](#footnote-ref-143)
143. This is an obligation to ensure that the Project Company fully maintains and enforces its rights under the relevant Project Documents. [↑](#footnote-ref-144)
144. The Finance Documents will contain a number of specified Reserved Discretions, where the Project Company will be required to act in accordance with the instructions of the Lenders (or notify or consult with the Lenders) in relation to the exercise of important rights under the Project Documents. The specific provisions that will be subject to reserved discretions will not normally be identified at the term sheet stage. [↑](#footnote-ref-145)
145. The Project Documents and the relevant budgets are reviewed by the Lenders. The Project Company is thus typically restricted from executing any documents that are not already disclosed to the Lenders or otherwise contained in the relevant budgets. Entry into additional contracts would be controlled by the Reserved Discretions, and there may be a threshold amount for low value contracts that may need to be entered into in the usual course of business. [↑](#footnote-ref-146)
146. This may be covered by the obligation to act in accordance with the Reserved Discretions which typically impose such restrictions as well. [↑](#footnote-ref-147)
147. This may be covered by the obligation to act in accordance with the Reserved Discretions which typically impose such restrictions as well. [↑](#footnote-ref-148)
148. Distributions may only be made if the Distribution Tests are met – see above. [↑](#footnote-ref-149)
149. Consider if list should be exhaustive or expressed to be without limitation – see footnote 140 above. [↑](#footnote-ref-150)
150. Consider if this should constitute an event of default or a mandatory prepayment (falling under "Change of Control") and if the latter, consider including it as one of the conditions of the Distributions Test. [↑](#footnote-ref-151)
151. The suspension of Project Documents (item H.4(e) above) or this abandonment event of default may cover the occurrence and continuity of force majeure. Note that the occurrence and continuity of force majeure is not commonly set as a specific event of default in regional deals. [↑](#footnote-ref-152)
152. There are different ways of formulating this event of default. Some typical formulations include the occurrence of any event or circumstance which may have "a Material adverse Effect" or "a material adverse effect on the ability of a Major Project Participant to perform or comply with its obligations under the transaction documents". The actual formulation is usually settled during the facility documentation stage. [↑](#footnote-ref-153)
153. Depending on the deal, it may be appropriate to include additional events of default in relation to Major Project Participants – including misrepresentation, covenant breaches – for instance, if there is a Shareholder Contribution and Sponsor Support Agreement with funding requirements or a form of guarantee. If there is a concession agreement or government support for the project, it may be appropriate to include specific events of default to deal with events and milestones under these documents. [↑](#footnote-ref-154)
154. If the project has one syndicate of Lenders, they can act as a single block in accordance with the Majority Lenders voting arrangement set out in this template term sheet. However, many project financings involve different sources of debt (e.g. domestic and international banks, multilateral agencies (MLAs), export credit agencies (ECAs) and bond investors). This gives rise to questions as to what rights different types of Lender have and how the relationship between Lenders is managed – these questions are usually addressed in an intercreditor agreement (which is the Security Trust and Intercreditor Deed in this term sheet). It is common for some elements of the intercreditor arrangements to be set out in the term sheet, but this will depend on the specific transaction and what stage the term sheet is entered into.

     Typical intercreditor issues that arise in a project financing context and which may be referred to in the term sheet are:

     1. Common voting arrangements for waivers, amendments and enforcement action – for instance, do all categories of Lender have to agree before any of them can accelerate their loans or take enforcement action? What decisions can be made by a majority of Lenders (rather than all Lenders) and how will the 'majority' be calculated (e.g. across the board or by facility – see footnote 156).
     2. Pro rata sharing of security – the general approach is for all Lenders to share in the security pro rata, but different arrangements may be agreed on a particular project (e.g. working capital Lenders may be unsecured, or specific lending groups may have security over specific assets).
     3. Subordination of certain debt – where shareholders are providing loans to the Project Company, these will invariably be subordinated to the bank debt, but there may be additional layering of debt.
     4. Hedging counterparties – most project financings involve some form of hedging (most typically interest rate hedging) and the position of hedging counterparties vis-à-vis Lenders will need to be addressed. The general position is that the hedging counterparty (i) does not vote on waivers and amendments, (ii) may terminate the swap independently if there is a specified default (typically non-payment or insolvency) and (iii) has a vote on enforcement based on the actual breakage cost on termination of the swap.
     5. Post-enforcement payment priorities – this is simply how any proceeds of enforcement will be shared among Lenders. The starting point is usually that proceeds will be shared pro rata among Lenders, but the detailed sharing arrangements will be specific to each project.

     [↑](#footnote-ref-155)
155. Where an ECA Facility is included, assignment/transfer to the ECA shall be permitted without the Project Company's consent. [↑](#footnote-ref-156)
156. Project financings typically demand a higher level of engagement from Lenders during the life of the project than would be the case on less structured financings, and thus the departure from the typically expected position that Lenders may freely transfer the participations. Lenders may be called upon frequently to make decisions, and there may be significant decisions to be made by Lenders, which means that the parties on a project financing often focus very minutely on issues relating to the identity of the Lenders and the relationships between the individual Lenders, and between the lending group and the borrower. Common points of discussion include the definition of permitted transferee entities (e.g. concerns may be raised about the possibility that vulture funds or distressed debt specialists, for example, might become Lenders). On some transactions, the parties may agree on a list of permitted transferees (e.g. a white list). [↑](#footnote-ref-157)
157. To be considered if this should be included. This may be less acceptable to certain lenders (e.g. ECAs and DFIs which are lending to the Project directly). [↑](#footnote-ref-158)
158. Additional conditions precedent may be required where the financing includes an ECA Facility, a VAT Facility or an Islamic financing tranche. [↑](#footnote-ref-159)
159. Depending on the specific circumstances and timeline of each transaction and based on the advice of local counsel, certain initial drawdown conditions precedent can be moved as a condition subsequent with a time limit, for example, certain non-essential project authorisations and insurance relating to the operating phase of the Project. [↑](#footnote-ref-160)
160. At minimum this would involve the Project Company, the Sponsors and/or the Shareholders (if not also the Sponsors). Certified copies of the constitutional documents of the Construction Contractor, the O&M Contractor and/or the Offtakers are desirable if direct agreements are entered into in respect of the relevant Project Documents. [↑](#footnote-ref-161)
161. Degree of corporate authorisation required dependent on the jurisdiction in which the relevant entity is incorporated (and consequently the statutory requirements for corporate approvals). [↑](#footnote-ref-162)
162. Certified copies of the corporate authorisations of the Construction Contractor, the O&M Contractor and/or the Offtakers are desirable to be obtained as a condition precedent if direct agreements are entered into in respect of the relevant Project Documents. [If not provided as a condition precedent, it is likely that such authorisation documents will be separately requested for the purpose of issuing legal opinions.] [↑](#footnote-ref-163)
163. Scope to align with item 1(a) and 1(b) above. [↑](#footnote-ref-164)
164. This will include the Security Documents, which in turn should include any Direct Agreements. [↑](#footnote-ref-165)
165. If certain authorisations/consents/permits will not be obtained until after Financial Close, the Lenders' requirements relating to the timing and process for obtaining such authorisations should be set out. Advice of local counsel will be required. [↑](#footnote-ref-166)
166. Some jurisdictions (in emerging markets in particular) have legal requirements for insurance to be taken out with local insurance companies. Where this is the case, local primary insurers will typically reinsure (i.e. take out insurance themselves) as they would otherwise not be able to meet a major claim. [↑](#footnote-ref-167)
167. Typically, there will be a report from each of the Technical Adviser, Environmental and Social Adviser, Insurance Adviser and Model Auditor (and any commercial adviser). There may be a Legal Review Report prepared by the Legal Advisers. [↑](#footnote-ref-168)
168. This would typically require the following: (1) counsel for the Lenders provides a legal opinion on the Finance Documents; and (2) counsel for the Project Company provides a legal opinion on the capacity/authority of the Project Company and the key Project Documents (e.g. power purchase agreement, concession agreement and Construction Contract). [↑](#footnote-ref-169)
169. The documentation listed here is what would typically be required by banks seeking to ensure that a project was in compliance with the Equator Principles. Development Finance Institutions (DFIs) may have additional requirements in relation to environmental and social matters. [↑](#footnote-ref-170)
170. These must be audited by the Model Auditor. [↑](#footnote-ref-171)
171. The initial operating budget may also be included in the Financial Model. [↑](#footnote-ref-172)
172. If the Project Company is an SPV (and thus has no existing accounts), Lenders would request initial accounts (which will not have been audited) – this may consist simply of an opening balance sheet. [↑](#footnote-ref-173)
173. Accounts for Sponsors/Shareholders and/or Major Project Participants may be appropriate, particularly where guarantees, contingent equity support or other credit support have been provided. [↑](#footnote-ref-174)
174. Relevant for any overseas borrower which will need to appoint an agent in the jurisdiction nominated for enforcement proceedings to accept service of process. [↑](#footnote-ref-175)
175. This would be certified by the Borrower and may also be included in the Financial Model or a funds flow statement if required by Lenders. [↑](#footnote-ref-176)
176. This may not be appropriate in all circumstances and may need to be removed once the conditions precedent have been agreed to avoid the last-minute addition of additional conditions precedent. [↑](#footnote-ref-177)
177. These will be negotiated on a project by project basis. Typically, a wider set of representations is provided at the Signing Date, with a reduced set that need to be repeated from time to time. [↑](#footnote-ref-178)
178. This particular condition precedent is typically included but may be met with resistance by borrowers. Note that not achieving Project Completion Date/Financial Completion Date by the Longstop Date will be an Event of Default, but this condition precedent allows a forward-looking test rather than having to wait for the longstop date to pass. There are alternative ways of incorporating a forward-looking test (e.g. allowing Lenders to require on demand a certification from the Project Company/Technical Adviser that Project Completion Date/Financial Completion Date will be achieved by the Longstop Date). [↑](#footnote-ref-179)
179. Insert any conditions precedent that may be required for individual facilities. For example, ECA backed facilities typically have additional condition precedent requirements, which may include copies of the relevant invoices from eligible contractors for eligible costs, other deliverables required under the ECA policies, and conditions precedent relating to the ECA policies themselves being in full force and effect and any legal opinion(s) relating to those ECA policies. [↑](#footnote-ref-180)
180. These requirements may include pro rata utilisation of Facilities. [↑](#footnote-ref-181)
181. For information about FATCA, we note that the Loan Market Association has published some suggested drafting to deal with FATCA. On project finance transactions, FATCA will be relevant if the project company is incorporated in the US. Otherwise, it will almost certainly not apply, unless the project company is not a pure project SPV, in which case a closer analysis of FATCA may be required. [↑](#footnote-ref-182)
182. Points to bear in mind in the context of the increased costs clause include the following:

     1. Dodd-Frank Act – Lenders may request that Dodd-Frank costs are borne by the borrower;
     2. Basel II – Basel II was finalised in 2004 and implemented in Europe during 2007 and so it is rarely referenced now in the increased costs clause; and
     3. Basel III – it will be a matter for commercial agreement as to whether Basel III costs will be borne by the borrower or Lenders. Whatever is agreed commercially, care needs to be taken with drafting to ensure the correct result.

     [↑](#footnote-ref-183)
183. Delete as applicable. [↑](#footnote-ref-184)
184. Delete as applicable. [↑](#footnote-ref-185)
185. Most complex or high-value disputes will tend to be heard by a three-person (or, very occasionally, five-person) arbitral Tribunal. Pre-conditions to the nomination of an arbitrator may also be appropriate (e.g. a lawyer of a given number of years' experience in a certain field or a sector/industry specialist). [↑](#footnote-ref-186)
186. Consider whether disputes should be referred to arbitration or to courts. Parties to consider whether to include a prior mediation step before further dispute proceedings and, if so, amend this Clause to reflect the agreement (e.g. whether such recourse to mediation is mandatory and thus a pre-condition to further dispute proceedings). If parties agree to adopt mediation, one approach would be to incorporate the model clause on the SIAC-SIMC Arb-Med-Arb Protocol – more information on the AMA Protocol, including the model clause, can be found here: https://simc.com.sg/dispute-resolution/arb-med-arb/. [↑](#footnote-ref-187)
187. Only key definitions should be included in the term sheet. The remaining definitions can be included in full in the relevant documentation. [↑](#footnote-ref-188)
188. Parties may wish to consider if any amount released or projected to be released from the MRA to the Operating Account in the relevant period, to the extent such release is permitted in accordance with the Finance Documents, should be included here. See paragraph (b)(iii) of the definition. [↑](#footnote-ref-189)
189. Include if the facilities are in a currency other than Singapore dollars. Insert the principal financial centre of that currency. Consider whether different "Business Day" definitions are required for different facilities. [↑](#footnote-ref-190)
190. Update as necessary to reflect the relevant Calculation Period and the amortisation schedule (e.g. if the Calculation Period is 12 months and the Repayment Dates are semi-annual this will be the second Calculation Date immediately following such Calculation Date). [↑](#footnote-ref-191)
191. Consider whether to specify here instead of in the Ratios section: "including amounts payable in respect of the Working Capital Facility (to the extent not available to be redrawn)". [↑](#footnote-ref-192)
192. The formulation of the ratios would depend on the specific project. The discount rate used in an NPV calculation should reflect the risk of the project revenue flows not arising. A typical discount rate is therefore the interest charged by the lenders (as this, through the margin, incorporates the lenders' views of the riskiness of the project). Where this is the agreed approach, and interest rate hedging is used, then the discount rate will generally reflect the effective fixed rate funding achieved through the interest rate swaps. [↑](#footnote-ref-193)
193. This refers to costs (if any) that have been incurred by sponsors in developing the Project to date and which are to be taken into account in the financing. If sponsors are to be 'given credit' for historic costs, Lenders will require sponsors to provide satisfactory evidence of the sums spent and how such amounts have been applied. [↑](#footnote-ref-194)
194. This may be built into the capital expenditure/construction costs. [↑](#footnote-ref-195)
195. The term "Financing costs" is often used as a defined term in the Finance Documents where it may be defined differently (e.g. excluding costs of entry into hedging agreements) but here it simply refers to financing-related costs not covered under other headings. [↑](#footnote-ref-196)
196. Reserve accounts may be required to be fully funded at the beginning of the operating period, in which case the cost of doing so should be included in the project cost budget. If reserve accounts will be funded by letters of credit (L/Cs) rather than cash, the cost of the L/Cs will be included here. More detailed notes about reserve accounts can be found in the *Project Accounts* section of this Term Sheet. [↑](#footnote-ref-197)
197. The chart included in this section is purely for illustrative purposes and should be adjusted to reflect the shareholding structure of the relevant project. [↑](#footnote-ref-198)